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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo**

#### **Addendum**

#### **Mission to Honduras\***

#### *Summary*

The present report contains the findings of the Special Rapporteur on violence against women, its causes and consequences, from her visit to Honduras, conducted from 1 to 8 July 2014. In the report, the Special Rapporteur examines the situation of violence against women in the country, taking into account its causes and consequences and implications for the effective exercise and enjoyment of all human rights by women. She also discusses the State's responses, through an analysis of the obligation to act with due diligence, to prevent such violence, to protect and provide remedies to women who have been subjected to violence, and to prosecute and punish the perpetrators.

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\* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission and Spanish only.

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## Annex

[English and Spanish only]

### **Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Honduras (1–8 July 2014)**

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## I. Introduction

1. The Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, visited Honduras from 1 to 8 July 2014. The purpose of the visit was to examine the situation of violence against women in the country in a comprehensive manner, including violence perpetrated within the family, in the community, in institutional settings and in the transnational sphere. During the visit she met with relevant stakeholders in Tegucigalpa, San Pedro Sula and La Ceiba.

2. In Tegucigalpa, the Special Rapporteur met with the Deputy Minister for Security, the Deputy Secretary for Justice and Human Rights and representatives of her department;<sup>1</sup> the Deputy Secretary for Social Development and representatives of her department, including the Deputy Chair of the National Institute for Women (INAM); representatives of the Gender Unit of the Honduran National Police; the President of the Supreme Court of Justice; members of the congressional Commission on Gender Equity; staff of the Office of the Public Prosecutor (Fiscalía General); and representatives of the Office of the National Commissioner for Human Rights (CONADEH), the National Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment (CONAPREV) and the Inter-Agency Commission to Combat Commercial Sexual Exploitation and Trafficking in Persons (CICESCT). In San Pedro Sula and in La Ceiba, she met with the mayors and with the staff of each city's Municipal Office for Women (OMM).

3. The Special Rapporteur had the opportunity to speak with the staff and women survivors of violence in three shelters and to hear the testimonies of women and girls in detention facilities. In La Ceiba, she visited a comprehensive centre for victims of domestic and sexual violence (Centro MAI), where she met with the staff working in the medical and legal units. She also met with representatives of civil society, including women's organizations, and representatives of United Nations agencies, funds and programmes.

4. The Special Rapporteur expresses her deep appreciation to all her interlocutors, including State authorities and representatives of civil society organizations and United Nations agencies. Most importantly, she wishes to thank the individual women who shared their personal experiences of violence and survival with her. She looks forward to a fruitful and continued dialogue with the Government and other stakeholders on the implementation of her recommendations.

## II. Context

5. Honduras is classified as a lower middle-income country with a population estimated at 8.1 million in 2013. Approximately 65 per cent of the population lives in poverty. While 60 per cent of the national income is earned by the wealthiest 20 per cent of the nation, the poorest 20 per cent earn just 2.02 per cent of the income.<sup>2</sup> High levels of illiteracy and low levels of school attendance are also challenges facing Honduras.

6. In a historical context of poverty, underdevelopment and citizen insecurity, the 2009 coup further resulted in serious human rights violations being committed. On 28 June 2009, the Honduran military forces apprehended the then President of Honduras, Manuel Zelaya.

<sup>1</sup> Prior to the recent restructuring of the Government, the Department of Justice and Human Rights was a ministry.

<sup>2</sup> World Bank data indicators of income share held by lowest 20 per cent. See [www.tradingeconomics.com/honduras/income-share-held-by-lowest-20percent-wb-data.html](http://www.tradingeconomics.com/honduras/income-share-held-by-lowest-20percent-wb-data.html).

and led to his forced exit out of the country. The justification given was that he had planned to organize a poll on the possibility of holding a referendum on constitutional reforms prior to the November 2009 elections. Thereafter the then Speaker of Congress, Roberto Michelitti, was sworn in as the new President of Honduras. The international community largely recognized these actions as a military coup, which further exacerbated the situation and negatively affected Honduran society as a whole. As a response to the coup, the international community imposed sanctions and economic pressure on the country. The socioeconomic inequalities are compounded by high homicide rates, alarming levels of other expressions of violence, robberies, extortion, the proliferation of small and light weapons, and an increase in organized crime and the drug trade. The actions of violent gangs (*maras*) further contribute to high levels of insecurity.

7. In recent years, Honduras has been undergoing a period of stabilization. A number of measures have been taken to address the climate of widespread and systematic crime, corruption and impunity, including, among others, the establishment in 2010 of a ministry of justice and human rights and the setting up of the Truth Commission to examine events surrounding the 2009 coup. To address the growing insecurity and violence, in November 2011 the Congress passed an emergency decree allowing military personnel to carry out public service duties. In August 2013 it authorized the creation of a military police force with powers to seize control of violent neighbourhoods and make arrests, among other duties.<sup>3</sup> The role and continuing influence of the military in general, but particularly in policing and education activities, was a concern expressed by many interviewees.

8. In addition, the current Government, which has been in place since January 2014, has adopted strategies to tackle the financial crisis and reduce costs, while enhancing efficiency in responding to critical issues at the national level. For example, there has been a considerable reduction in the number of government ministries. However, the overall lack of institution-building, the high turnover of staff in the civil service, the reduction of specialized services and the politicization of appointment processes negatively affect the continuity and sustainability of Government policies and programmes.

### III. Manifestations of violence against women

9. Violence against women is widespread and systematic and affects women and girls in numerous ways. A climate of fear, in both the public and private spheres, and a lack of accountability for violations of human rights of women are the norm, despite legislative and institutional developments.

10. In 2006, the Committee on the Elimination of Discrimination against Women expressed concern about the prevalence of many forms of violence against women, including sexual abuse against women and girls, particularly incestuous abuse of girls, as well as rape, domestic violence and femicide (CEDAW/C/HON/CO/6, para. 18).

11. The existence of multiple and conflicting statistics reported by different stakeholders gives rise to concerns about the accuracy of data collection.

#### A. Violence against women in the family

12. According to the national health and population survey for the period covering 2011/12, 27 per cent of women aged between 15 and 49 years interviewed stated that they

<sup>3</sup> See Decree No. 168-2013 establishing the Military Police for Public Order.

had been subjected to physical violence at some point in their lives.<sup>4</sup> In 2012, the Statistical Observatory of the Office of the Public Prosecutor reported receiving more than 16 thousand complaints related to violence against women. About 74.6 per cent of those complaints pertained to domestic violence and intrafamily violence, followed by sex crimes, which accounted for almost 20 per cent of the total.

13. Domestic violence remains the leading reported crime at the national level. Between 2009 and 2012, 82,547 domestic violence complaints were lodged in both *juzgados de letras* (first instance courts) and *juzgados de paz* (local courts that address minor cases) across the territory.<sup>5</sup> Statistics illustrate that Honduran women are disproportionately affected by domestic violence: of the 21,170 such complaints received by the courts in 2013, 19,458 (92 per cent) were filed by women, as compared to 1,712 filed by men.<sup>6</sup> Statistics provided by the Special Prosecutor for Women show a low percentage of convictions as compared to the large number of complaints. During the 2012–2014 period, 4,992 complaints were registered, with just 134 convictions.<sup>7</sup>

14. Femicides have increased alarmingly in recent years and were highlighted as a major source of concern by all interlocutors. In 2012, 606 cases of femicides were reported, which represents, on average, 51 women murdered per month.<sup>8</sup> According to preliminary statistics from official sources, 629 cases of femicide were registered in 2013. A total of 445 violent deaths of women were reported through the main media outlets during the same period.<sup>9</sup> Traditionally, domestic violence and intrafamily violence were the leading causes of femicides, but new scenarios involving sexual violence, gang-related violence and organized crime have emerged in Honduras. It is reported that one in five cases of femicide occurs in the context of domestic or intrafamilial violence; 7 per cent are linked to sexual violence and 60 per cent are linked to organized crime.<sup>10</sup>

## B. Violence against women in the community

15. Violence against women in the community can include rape and other forms of sexual assault and harassment. During the period from 2006 to 2010, the number of cases of sexual violence reported to the police per 100,000 inhabitants ranged from 42.35 in 2006 to 52.65 in 2009.<sup>11</sup> The online database of the judiciary indicates that 2,850 cases relating to sexual offences were registered between 2011 and 2013, including, among others, cases of

<sup>4</sup> Honduras, "Encuesta Nacional de Demografía y Salud 2011–2012: informe resumen", p. 16.

<sup>5</sup> Liana Funez and Sara Aviléz Tomé, "Informe de la consulta de la Estrategia de Seguridad en Centro America, ESCA: informe de Honduras" (2013).

<sup>6</sup> Judiciary of Honduras (Poder Judicial), "Boletín estadístico", Juzgados de letras y paz en materia de violencia doméstica. Ingresos por departamento, 2013. Available from [www.poderjudicial.gob.hn/CEDIJ/Documents/Bolet%C3%ADn%20Estad%C3%ADstico%20A%C3%B1o%202013.pdf](http://www.poderjudicial.gob.hn/CEDIJ/Documents/Bolet%C3%ADn%20Estad%C3%ADstico%20A%C3%B1o%202013.pdf).

<sup>7</sup> The Government of Honduras provided statistics in its response to the draft report provided, and informed the Special Rapporteur that a technical agency for criminal investigation would soon be established.

<sup>8</sup> National Autonomous University of Honduras (UNAH), "Boletín especial: violencia contra las mujeres y femicidios en el Distrito Central año 2012", special edition No. 12 (June 2013) ([www.unicef.org/honduras/Mujeres\\_DC\\_2012.pdf](http://www.unicef.org/honduras/Mujeres_DC_2012.pdf)).

<sup>9</sup> UNAH, "Boletín especial sobre muerte violenta de mujeres", special edition No. 17 (January 2014).

<sup>10</sup> Mirta Kennedy, "Informe preliminar de la consulta de la ESCA en seis países" (Tegucigalpa, 2014).

<sup>11</sup> Ipas and the United Nations Population Fund (UNFPA), "Estudio sobre la situación y la calidad de los servicios seleccionados de atención a la violencia sexual en Honduras", December 2011.

rape, sexual intercourse with a minor and abduction.<sup>12</sup> However, other sources claim that in 2013 alone, approximately 2,851 sexual violence complaints were filed.<sup>13</sup>

16. The acts of gangs further exacerbate the levels of violence and insecurity in Honduras. Young girls involved in gangs are subjected to rape and are forced to carry drugs and guns. They are also pressured to have sex during initiation rituals. The Special Rapporteur was informed that women and girls between the ages of 15 and 34 are often killed in vengeance acts to settle disputes between gang members. The victims' bodies reveal the brutality inflicted, including appalling levels of mutilation and torture, and also decapitation to erase all traces of identity. Those acts, which are most common in urban areas, are often also associated with acts of kidnapping and sexual violence.

17. Violence against sex workers is escalating. The lesbian, gay, bisexual, transgender and intersex community is also facing escalating violence; the Special Rapporteur was informed that 107 members of this community were murdered between 1994 and October 2012 in the departments of Francisco Morazán, Cortés, Atlántida, Islas de la Bahía, Choluteca, Comayagua, Olancho and El Paraíso.<sup>14</sup> Lesbians and other women who live outside of heterosexual norms are often subjected to violence, rape and other forms of discrimination. In the workplace they are often bullied, harassed or overlooked for promotions, and may even be denied employment due to their style of dress.<sup>15</sup> The Special Rapporteur was informed of an increasing trend of migration, especially among transgender sex workers seeking to flee from discrimination and abuse.

18. The working conditions in *maquila* plants in the country's export processing zones (EPZs) are also a subject of concern. The *maquila* industry employs approximately 125,000 people, 65 per cent of whom are women.<sup>16</sup> Most of the employees are young women from rural areas between the ages of 17 to 25. Interviewees referred to recurrent violations of their rights, including verbal and physical abuse by supervisors, sexual harassment, being subjected to pre-employment pregnancy tests, unfair dismissal and discrimination on the grounds of pregnancy, and denial of maternity leave and other social benefits.

### C. Violence perpetrated and/or condoned by the State

19. It has been reported that, during and after the coup, hundreds of people were brutally repressed by the police, the military and security forces to break up demonstrations, and that more than 10 people died. Multiple cases of threats, intimidation, illegal arrests, kidnappings and torture occurred.<sup>17</sup> The Special Rapporteur was also informed of cases of enforced disappearances of women. Sources indicate that there has been a 281 per cent

<sup>12</sup> Data from the Centro Electrónico de Documentación e Información Judicial, "Tribunales de sentencia a nivel nacional, ingresos y resoluciones: delitos contra la libertad sexual y la honestidad cometidos a mujeres, años 2011–2013".

<sup>13</sup> Calculations of the Centre for Women's Rights, based on complaints lodged nationally.

<sup>14</sup> Cattrachas, "Situación de las muertes violentas de la comunidad LGTTBI en Honduras, 1994–2012".

<sup>15</sup> Asociación para el Desarrollo Integral de la Mujer (ADEIM Simbiosis) and others, *Unnatural, Unstable, Unemployed: Lesbians and Workplace Discrimination in Bolivia, Brazil, Colombia, Honduras and Mexico* (2005).

<sup>16</sup> Jennifer M. Swedish, "The SETISA factory: mandatory pregnancy testing violates the human rights of Honduran maquila workers, *Northwestern Journal of International Human Rights*, vol. 4, No. 2 (2005).

<sup>17</sup> International Federation for Human Rights (FIDH), "Honduras: human rights violations in Bajo Aguán" (2011).

increase in reported cases of disappeared women, up from 91 cases in 2008 to 347 in 2013.<sup>18</sup>

20. As regards the situation in prisons and other detention facilities, in 2009 the Committee against Torture expressed concern at reports of frequent ill-treatment and torture and excessive use of force on arrest, as well as acts of extortion by law enforcement officials, and at the persistent high number of detainees, both children and adults, in prolonged pretrial detention (CAT/C/HND/CO/1, para. 14). In 2012, the Inter-American Commission on Human Rights reported that the main structural deficiencies in the Honduran prison system included the delegation of internal control of the prisons to the prisoners themselves; overcrowding; lack of sufficient budget and adequate legal structure; lack of professional prison staff that was trained and specialized; and the lack of separation between male and female inmates and between those awaiting trial and those who had been convicted. In 2012, CONADEH reported that 56 per cent of the total prison population consisted of convicted persons, whereas the remaining 44 per cent had yet to be sentenced.<sup>19</sup> CONAPREV, established in 2008, monitors detention centres and ensures that the treatment of prisoners is in compliance with the Standard Minimum Rules for the Treatment of Prisoners.

21. As in most countries, the number of incarcerated women in Honduras has been growing, with a female inmate population of 718 female prisoners across 24 prisons. The Special Rapporteur visited the national penitentiary for women (Penitenciaría Nacional Femenina de Adaptación Social), the only prison exclusively for women, in Tamara, 40 kilometres from Tegucigalpa. At the time of the visit, 300 inmates and 12 children, who are allowed to stay with their mothers up to the age of 4, were housed in the facility. Although high degrees of overcrowding were not observed, the Special Rapporteur was informed that at times there were up to 16 women in a 4 metre by 4 metre cell. Currently the food budget allocated to each inmate is about 13 lempiras for three meals, which is the equivalent of approximately US\$ 0.60.<sup>20</sup> In addition, while there is a complaints procedure within the facility to report abuse, the Special Rapporteur was informed that fear of repercussions against families prevents inmates from voicing their concerns.

22. Women are held for crimes such as theft, extortion, possession and trafficking of drugs, kidnapping and murder. While some have been convicted, many women were still awaiting sentencing or trial.<sup>21</sup> The women in the latter situation regularly miss their hearings due to inadequate legal representation and the unavailability of transportation to go to court. The Special Rapporteur was informed that after two years as pretrial detainees, the women are released. Through interviews with both inmates and staff, the Special Rapporteur confirmed that many women in detention have a history of being subjected to violence prior to being imprisoned. The links between violence against women and women's incarceration, whether prior to, during or after incarceration, is not being adequately addressed.

23. Located in the vicinity of the women's penitentiary are two rehabilitation facilities for 12- to 18-year-old adolescents who are in conflict with the law. Those institutions were

<sup>18</sup> Report submitted by feminist organizations in Honduras to the Special Rapporteur, entitled "Situación de las violencias contra las mujeres en Honduras" (2014).

<sup>19</sup> CONADEH, annual report for 2012 ([http://app.conadeh.hn/Anual2013/informes/CONADEH\\_2012.pdf](http://app.conadeh.hn/Anual2013/informes/CONADEH_2012.pdf)).

<sup>20</sup> CONAPREV, "Relatora de la ONU se reúne con el MNP-CONAPREV" ([www.conaprev.gob.hn/index.php/noticias/83-relatora-de-la-onu-se-reune-con-el-mnp-conaprev](http://www.conaprev.gob.hn/index.php/noticias/83-relatora-de-la-onu-se-reune-con-el-mnp-conaprev)).

<sup>21</sup> National Directorate of Special Preventive Services, under the Ministry of Security, as at 7 October 2013.

under the administration of the Honduran Institute for Children and the Family (IHNFA), with one facility for adolescent boys and the other for girls. Due to recent changes by the Government, the Institute is no longer in existence. At the time of the visit, 22 girls had been temporarily transferred to the premises of the Casita 21 de Octubre, a centre for vulnerable adolescent boys who are not yet in trouble with the law. The boys were moved to the girls' detention centre in Tamara. Reasons for the urgent relocation of the girls include allegations of improper management; the need to address repeated break-out attempts; and the need to prevent the girls from fraternizing with the boys in the other detention facility.

24. The majority of the girls had been detained for theft and drug crimes and on the presumption that they were involved with gangs, in accordance with article 332 of the Criminal Code on "unlawful associations". The Special Rapporteur heard from the girls and also witnessed the injuries sustained by some of them due to the excessive use of force to enforce cooperation and obedience to the rules set by the administrators of the facility. The issue of violence against the girls was raised with CONAPREV during the mission. The Special Rapporteur also notes the lack of rehabilitation activities offered to the girls in the facility.

25. The problematic nature of article 332 is of concern, as the term "unlawful associations" can and has led to the incarceration of girls without proper due process. In 2009, the Committee against Torture expressed concern that a suspected member of an "unlawful association" could be arrested without an arrest warrant and that his/her detention on remand was mandatory. It expressed further concern at the repressive social policy in combating "unlawful associations", or "*maras*" or "*pandillas*", which did not adequately consider the root causes of the phenomenon and might criminalize children and young people on the sole ground of their appearance (CAT/C/HND/CO/1, para. 19).

#### **D. Violence linked to the transnational sphere**

26. Due to its strategic location, Honduras is a country of origin and transit in Central America and, to a lesser extent, a destination country, confronted with numerous challenges related to migration and to trafficking, both of persons and of narcotics.

27. The lack of economic opportunities pushes people to leave their homes and communities in search of better lives. Some are drawn to neighbouring countries, while others migrate to the United States of America. Reportedly, 17,582 unaccompanied undocumented minors were apprehended at United States borders in 2014. Of the 98 children from Honduras interviewed by the Office of the United Nations High Commissioner for Refugees (UNHCR), 44 per cent had been threatened with or were victims of violence by organized armed criminal actors; 24 per cent reported abuse at home; 11 per cent reported that they had been victims of both violence in society and abuse in the home; and 21 per cent discussed situations of deprivation.<sup>22</sup> Sources indicate that from 1997 to 2012, 250,205 migrants were returned/deported by the United States back to Honduras.<sup>23</sup>

28. Impoverished women and children are particularly vulnerable and are often tricked or forced into commercial sexual exploitation or servitude. Although they are promised well-paying jobs in the service-related sector, upon arrival at their destinations, they are made to work under inhumane conditions and are often subjected to threats of deportation

<sup>22</sup> UNHCR, *Children on the Run* (2014).

<sup>23</sup> Information from the Directorate-General for Migration and Foreign Nationals.

or incarceration, physical and emotional abuse and violence. Trafficking remains grossly underreported due to the hidden nature of the crime, and also the prevalence of organized crime. The Office of the Public Prosecutor registered 27 complaints of trafficking of women for sexual exploitation in 2013.

#### **IV. Implications of inequality, discrimination and violence**

29. Equality and non-discrimination principles are enshrined in the Constitution of Honduras and other legal instruments, but there is still considerable *de facto* gender inequality in the civil, political, economic and social spheres, which precludes the full enjoyment of human rights by women and girls.

##### **A. Civil and political rights**

30. Violence against women negatively affects civil and political rights, including, among others, women's right to life, bodily integrity and equal protection under the law. The right to life is guaranteed under article 65 of the Constitution. During her visit, the Special Rapporteur was informed that the number of violent deaths of women had risen by 263.4 per cent between 2005 and 2013. Evidence suggests a direct correlation between femicide rates and the proliferation and use of small arms. In Honduras, a person is legally allowed to register up to five firearms.<sup>24</sup> Given that men comprise the majority of those who use small arms, they represent a threat both at home and on the streets, thus contributing to the generalized culture of violence and insecurity facing women and girls in particular.

31. Violence against women also restricts women's freedom of movement in a number of ways. The Special Rapporteur was informed that during the demonstrations that had taken place during the coup, several women had been arbitrarily detained and suffered sexual abuse. This type of behaviour further served to intimidate women into avoiding the public arena, thus affecting women's effective participation in decision-making processes, both in the public and private spheres. Prior to the restructuring of the Government, women held 3 out of 17 ministerial positions.<sup>25</sup> The Equal Opportunities for Women Act of 2000 established, for the first time, a minimum 30 per cent quota for women with respect to posts filled by popular vote. Despite this provision, women represented only 7.1 per cent of elected officials in Congress in 2001. The mandatory requirement for political parties to comply with the provisions on participation by women, contained in the reform of the Elections and Political Organizations Act in 2004, proved to be effective, as in 2005, women constituted 24.2 per cent of the candidates elected. However, women's representation in parliament dropped to 19.5 per cent in 2009.

32. In April 2012, Congress approved an amendment to article 105 of the elections law which increased the minimum quota of women candidates from 30 to 40 per cent for primary elections. The amendment also stipulated that the quota would increase to 50 per cent for future election processes.<sup>26</sup>

<sup>24</sup> Control of Firearms, Ammunition, Explosives and Other Related Material Act, art. 27, as amended through Decree No. 69-2007.

<sup>25</sup> Inter-Parliamentary Union and the United Nations Entity for Gender Equality and the Empowerment of Women, "Women in politics: 2014" ([www.ipu.org/pdf/publications/wmmmap14\\_en.pdf](http://www.ipu.org/pdf/publications/wmmmap14_en.pdf)).

<sup>26</sup> European Union Election Observation Mission, Honduras 2013, "Honduras: final report — general elections 2013".

33. Women made up 40.4 per cent of candidates for Congress and 20.8 per cent of candidates for mayor in the 2013 general elections. The elections resulted in a Congress with 24.2 per cent women members, and local governments in which 6.7 per cent of mayors are women.<sup>27</sup> With regard to the judiciary, there are 798 judges and magistrates in Honduras; of those, 398 are women.<sup>28</sup> Of the 15 magistrates in the Supreme Court, 3 are women.<sup>29</sup> A gender unit was established within the Supreme Court pursuant to Accord No. 04-2010 of 30 September 2010.

34. The Special Rapporteur notes that access to justice for women, including for indigenous and Afro-descendant women, is seriously compromised due to a range of institutional and procedural factors. These obstacles include insufficient resources and poor infrastructure; the lack of specialized units and staff trained on gender issues within the different criminal justice institutions, including police, prosecutors and judges; and the length of trials and delays in the criminal justice process. Moreover, the lack of proper investigation, evidence collection and forensic facilities and capacities further hinder women's access to justice.

35. Reporting of violence against women is extremely low compared to the actual occurrence. Reasons that prevent women and girls from seeking help or reporting acts of violence include stigma, shame, discrimination, fear of reprisals from the perpetrators, feelings of guilt and lack of support from friends and family, as well as complications and risks on prior to lodging the complaints.<sup>30</sup> The Special Rapporteur was informed that even when women wish to file complaints, they are often encouraged to withdraw the case. The lack of a responsive environment, and the lack of economic independence, results in many victims being compelled to stay in abusive relationships.

36. As regards domestic violence, while there are legal provisions aimed at securing the safety of those accessing justice through protection orders, injunctions or other interim measures, the Special Rapporteur was informed that perpetrators seldom abide by these provisions. In theory, the latest amendment to article 23 (8) of the Domestic Violence Act of 1997 protects the confidentiality of the concerned parties, but in fact it restricts victims' access to justice by preventing service providers from having access to information necessary to assist such clients with their cases.<sup>31</sup> The Special Rapporteur also notes the absence of an effective witness protection programme and safe accommodation for those at risk of further violations.<sup>32</sup>

37. Human rights defenders, particularly those working on issues linked to land claims, environmental protection and the rights of minorities, face numerous challenges, including harassment, intimidation and reprisals related to their activities. The Special Rapporteur was informed of the case of Gregoria Flores Martínez, a member of the Honduran Black Fraternal Organization (OFRANEH), who was shot and wounded by security forces on 30 May 2005 as she was collecting testimony to present before the Inter-American Court of Human Rights. The Court issued a ruling acknowledging the precarious security situation

<sup>27</sup> Ibid.

<sup>28</sup> Judiciary of Honduras, "Memoria anual 2012" ([www.poderjudicial.gob.hn/transparencia/planeacion/informes/memorias/Documents/Memoria%20PJ%202012.pdf](http://www.poderjudicial.gob.hn/transparencia/planeacion/informes/memorias/Documents/Memoria%20PJ%202012.pdf)).

<sup>29</sup> Information retrieved from the website of the judicial branch ([www.poderjudicial.gob.hn/](http://www.poderjudicial.gob.hn/)).

<sup>30</sup> Ipas and UNFPA, "Estudio sobre la situación".

<sup>31</sup> In its response, the Government stated that the amendment to article 23 (8) had been abolished by Decree 66-2014 as of September 2014.

<sup>32</sup> Despite the response from the Government indicating that victims in need of special protection are provided with special accommodation, interlocutors assert that the system is not functioning as specified in the protocols.

of the Garifuna activists and asked the Government of Honduras to adopt protective measures for Ms. Flores, her family and other members of OFRANEH.<sup>33</sup>

38. Interviewees largely confirmed the findings of the Special Rapporteur on the situation of human rights defenders that women defenders are more at risk of certain forms of violence and other violations, such as prejudice, exclusion and repudiation, than their male counterparts due to the fact that they are seen as challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society, which often serve to normalize and perpetuate forms of violence and oppression. Furthermore, their complaints are often dismissed and they are subjected to repeated threats and intimidation by the authorities (see A/HRC/22/47/Add.1).

## B. Economic and developmental rights

39. Honduras is the second poorest country in Central America, with an estimated gross domestic product of US\$ 18.55 billion in 2013.<sup>34</sup> The country faces an extremely unequal distribution of income and a high unemployment rate. Due to the economic crisis and high levels of poverty, many men and some women have been forced to migrate in search of better means to support their families. It is reported that women head approximately 32 per cent of households.<sup>35</sup> This phenomenon is attributable to the disintegration of families due to domestic and intrafamilial violence, and also the high level of homicide in the country. It is estimated that the annual cost of violence amounts to 10 per cent of the gross domestic product (nearly US\$ 900 million).<sup>36</sup>

40. The Special Rapporteur notes the efforts made by the Government to alleviate poverty through its poverty reduction strategy and to promote women's economic development and empowerment through the adoption of the National Policy on Women and the Second Plan for Equality and Gender Equity (2010–2022). Furthermore, the principle of equal remuneration for work of equal value applies to all workers without any discrimination pursuant to article 128 (3) of the Constitution and article 367 of the Labour Code. In practice however, gender-based discrimination in employment occurs. Although women's literacy rate is almost the same as men's, on average women are paid 67.6 per cent of the wage earned by men and women's unemployment rate is double that of men.<sup>37</sup> The areas in which women work, particularly the *maquila* industry and domestic work in private homes, tend to be less subject to regulation. Women are thus exposed to poor working conditions, low wages, little job security and the potential risk of exploitation and violence.

41. Historically dependent on agriculture and the export of bananas and coffee, Honduras has established EPZs as a means to stimulate economic growth by attracting foreign direct investment. It has diversified its export base to include the clothing and automobile industries. The first free zone was established in 1977 in the city of Puerto Cortés. In 2007, 342 companies operated in 67 EPZs. As at 2010, there were 102 EPZs and 19 industrial parks in Honduras.<sup>38</sup>

<sup>33</sup> Inter-American Court of Human Rights, *López Álvarez v. Honduras*, order of 13 June 2005.

<sup>34</sup> World Bank, data on Honduras (<http://data.worldbank.org/country/honduras>).

<sup>35</sup> Centro de Estudio de la Mujer, "Investigación sobre el cumplimiento de los DESC de las mujeres en Honduras" (2010).

<sup>36</sup> World Bank, Honduras Overview ([www.worldbank.org/en/country/honduras/overview](http://www.worldbank.org/en/country/honduras/overview)).

<sup>37</sup> International Trade Union Confederation (ITUC), "Internationally recognized core labour standards in Honduras: report for the WTO general council review of the trade policies of Honduras" (2010).

<sup>38</sup> *Ibid.*

42. A study on these zones conducted in 2010 revealed that 110,912 people were employed in various industries, with 78.5 per cent of them employed in garment factories.<sup>39</sup> Companies in the zones operate 24 hours per day, seven days per week and their production targets range from 1,800 to as high as 4,800 pieces per day, with the more a worker produces in one day, the higher the quota.<sup>40</sup> According to one report, women EPZ workers were allowed two timed bathroom breaks per shift and were not paid for their overtime if their production requirements were not met. The report also states that the workers' minimum wage is less than US\$ 0.70 per hour; that in many cases the employers do not contribute to the social security fund; that the workers have no health care rights; and that any attempt to organize or protest is punished with firing and blacklisting.<sup>41</sup>

43. Former *maquila* workers shared their testimonies with the Special Rapporteur and confirmed that they often worked long hours without rest. They also witnessed co-workers succumb to chronic fatigue, depression and musculoskeletal disorders as a result of the hazardous working conditions. Women working in EPZs are unable to claim their social benefits, including maternity leave, and earn between 28 and 51 per cent less than the minimum wage. Employers justify lower wages for women with the stereotype that women's work is less demanding than men's work.

44. Domestic workers are also at an increased risk of exploitation, as they work in private households. There are an estimated 64,000 domestic workers in Honduras; of which 20,000 are women. Article 131 of the Constitution states that domestic workers are covered by "social legislation", which provides health coverage for illness and maternity and allowances for family members, including the elderly and orphans. The law also addresses issues of lockouts, accidents, unemployment benefits, occupational diseases and all other contingencies that affect the ability to be productive. Unfortunately, in practice, many domestic workers are denied such protections.

45. Interlocutors also raised the issue of access to land for farmers as a concern. Since 2009, the Bajo Aguán region in northern Honduras has been the setting of land disputes. Some concerns raised in interviews include the problematic nature of the land reform programme of 1972; the allocation, over two decades, of an estimated 120,000 hectares of land to farmers who had migrated from the south of the country; and the subsequent modification of the land reform in 1992, which allowed the farmers to sell their land to third parties. It was argued that thousands of acres of land had been transferred from the farmer communities to large agro-industrial firms, with entrepreneurs in palm oil production seizing the opportunity and acquiring a significant percentage of the land.<sup>42</sup>

46. Farmer communities have disputed the legality of such land sales, claiming that they are still the rightful owners of the land. Information was shared indicating that between January 2010 and March 2011, 25 deaths had been registered relating to conflicts over land. The Special Rapporteur also received allegations that Margarita Murillo, president of the farmers organization Las Ventanas and the founder of the National Farmers Trade Union (Unión Nacional de Campesinos), had been assassinated in August 2014 as she was working on a piece of land in the department of Cortés. It is alleged that her death may be due to her work defending the rights of farmers.

<sup>39</sup> Metropolitan Autonomous University in Xochimilco and Colectiva de Mujeres Hondureñas.

"Condiciones de trabajo y prevalencia de trastornos musculoesqueléticos y psíquicos en población trabajadora de la maquila de la confección, Departamento de Cortés, Honduras" (2012).

<sup>40</sup> Jamie K. McCallum, "Export processing zones: comparative data from China, Honduras, Nicaragua and South Africa", International Labour Office Working Paper No. 21 (Geneva, 2011).

<sup>41</sup> ITUC, "Internationally recognized core labour standards".

<sup>42</sup> FIDH, "Honduras: human rights violations".

47. Sources indicate that 1,487 land-ownership deeds were issued to farmers between February and August 2010, but less than one third of these (482) were awarded to women. Furthermore women were allocated 28.4 per cent of the ownership rights for agricultural land during this period. Some sources argue that women are largely denied access to and control of productive resources and that, in most cases, they are unable to obtain credit to enable them to be successful farmers. This results in their dependency on their husbands or male relatives being reinforced, and renders them vulnerable to violence.<sup>43</sup>

48. One report states that 300,000 children between the ages of 5 and 14 work in Honduras, with 63 per cent of them in the agricultural sector. The report also reveals the prevalence of child labour within indigenous communities.<sup>44</sup>

### C. Social and cultural rights

49. Obstacles to the promotion, protection and fulfilment of women's human rights and a life free from all forms of violence include deeply rooted patriarchal attitudes and the pervasiveness of a *machista* culture that reinforces stereotypes about the roles and responsibilities of women and men in the family, in the workplace and in society.

50. Education is free in the public system, and the number of girls enrolled in primary school is higher than that of boys. However, the level of education remains inadequate, particularly in rural areas. The Special Rapporteur was informed that due to the prevalent and visible drug trade, which has given rise to concerns about safety and exposure to drug dealers, parents living in certain areas are reluctant to send their children to school.

51. The lack of education and employment opportunities are among the major causes of gang involvement by children. The Government established the Guardians of the Homeland initiative in 2007<sup>45</sup> which extends the mandate of the military to incorporate the training of vulnerable children aged between 5 and 18, and adults up to 23 years of age, in "values", with a view to discouraging children from joining gangs and to reducing delinquency. It was estimated that 75,000 children participated in the initiative in 2013.

52. A study conducted between September and December 2010 revealed that there were approximately 4,281 active gang members operating in different cities, including 872 female adolescents, with 60 per cent of them in San Pedro Sula and 21 per cent operating in Tegucigalpa.<sup>46</sup> In addition, 447 active gang members were in detention in January 2014. Amendments to article 332 of the Criminal Code resulted in the migration of members from urban to rural areas, turning these areas into new hubs for gangs.<sup>47</sup>

53. Reproductive rights remain an area of particular concern. Honduras has the second highest rate of teenage fertility, with a rate of 102 per 100,000 live births. On 2 April 2009, Congress prohibited the promotion, use, sale, purchase and creation of any policy or programme related to the emergency contraception pill. It also banned the distribution and the commercialization of emergency contraception through pharmacies, drug stores and any other means. Additionally, Congress prohibited the use of oral contraceptives as a method

<sup>43</sup> Centro de Estudios de la Mujer, "Honduras: unbearable levels of violence", in Social Watch, *Report 2012*.

<sup>44</sup> ITUC, "Internationally recognized core labour standards".

<sup>45</sup> See Decree No. 1816 of 2007.

<sup>46</sup> National Programme for Prevention, Rehabilitation and Social Reintegration, "Situación de maras y pandillas en Honduras" ([www.unicef.org/honduras/Informe\\_situacion\\_maras\\_pandillas\\_honduras.pdf](http://www.unicef.org/honduras/Informe_situacion_maras_pandillas_honduras.pdf)).

<sup>47</sup> *Ibid.*

of emergency contraception.<sup>48</sup> The Supreme Court subsequently declared the ban on emergency contraception constitutional, upholding the view that emergency contraception was a method of abortion and therefore violated article 126 of the Criminal Code of Honduras, which criminalizes abortion without exception. The Article 132 of the Code provides for a sentence of four to six years' imprisonment for anyone who causes an abortion through acts of violence, even if unintentionally, while knowing the victim's state of pregnancy. The absolute prohibition of abortion implies that women and girls are condemned to continue pregnancies and to face revictimization by society. It has also led women and girls who are impregnated as a result of rape or incest to resort to unsafe and clandestine abortion services and practices, sometimes with fatal consequences.

## **V. Challenges in fulfilling the State's obligation to act with due diligence to eliminate violence against women**

54. Honduras has committed to protecting and promoting the rights of women through its ratification of numerous international instruments, including the International Covenant on Civil and Political Rights (1997) and its Optional Protocols; the International Covenant on Economic, Social and Cultural Rights (1981); the Convention on the Elimination of All Forms of Discrimination against Women (1983); the Convention on the Rights of the Child (1990) and the first two Optional Protocols thereto; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1996) and the Optional Protocol thereto; the International Convention on the Elimination of All Forms of Racial Discrimination (2002); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (2005); the Convention on the Rights of Persons with Disabilities (2008) and the Optional Protocol thereto; and the International Convention for the Protection of All Persons from Enforced Disappearance (2008).

55. The Special Rapporteur notes that Honduras is not yet a party to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women or the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

56. At the regional level, Honduras has ratified, among others, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

57. The National Institute for Women, established by Decree No. 232-98 of 1999, is the central body responsible for the implementation of the country's obligations with regard to women's rights, and its gender policy. The Special Rapporteur expressed concern that the Institute falls under the Social Development Department, perpetuating the view that violence against women needs to be addressed through a social welfare lens as opposed to through a human rights-based approach. She also expressed concern at the lack of resources allocated to the different mechanisms, which limits their capacity to effectively respond to violence against women.

58. The following section examines the measures taken by the Government to fulfil its international obligations to prevent, investigate, prosecute, and punish violence against women, as well as to protect victims and provide them with effective remedies.

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<sup>48</sup> See Decree No. 54-2009.

## A. Prevention

59. Measures by which States can fulfil their due diligence obligation to prevent violence against women include the enactment of laws, policies and programmes; the development of awareness-raising campaigns; the provision of training for relevant professionals; and the development of action plans to coordinate multisectoral approaches to addressing violence against women. Short illustrated publications, such as the popular version of the gender equality policy prepared by La Ceiba Municipality, can be considered a good practice for raising the awareness of a wider range of actors, including children.

60. The Domestic Violence Act is a preventive mechanism to combat domestic violence. Penalties of one to three years, and up to four years in aggravated cases, are set under article 179 (a) and (b) of the Criminal Code.<sup>49</sup> In many cases victims are reluctant to press charges against abusers for fear of reprisals. In addition to the Act, a national plan on violence against women was adopted in 2014 for the period covering 2014–2022. The Special Rapporteur regrets the lack of consultation with civil society in the elaboration of the plan.

61. The law against trafficking in persons was passed in April 2012. It prohibits all forms of trafficking and prescribes penalties ranging from 10 to 15 years of imprisonment. It also sets out, among other things, the structure and role of the Inter-Agency Commission to Combat Commercial Sexual Exploitation and Trafficking in Persons (art. 7).

62. Rape is considered a “public crime” and proceedings can be initiated even if the victim does not press charges.<sup>50</sup> In the absence of a complaint on the part of the victim of spousal rape, only a judge can take the decision to bring proceedings on an ad hoc basis. The penalties for sexual violence, including rape, vary depending on the type of the violation and aggravating circumstances. Penalties depend on factors such as the age, capacity, and state of the victim; the relationship between the victim and the aggressor; and the intentional transmission of sexually transmitted diseases, including HIV. The maximum sentence ranges from 15 to 20 years.<sup>51</sup> Article 149 of the Criminal Code also makes provisions to address the sexual abuse of minors. Preventive measures are included in the protocol provided to police on assistance to women survivors of violence, the National Mental Health Policy and the Third National Strategic Response to HIV and AIDS, among others.<sup>52</sup> Sexual harassment is criminalized under article 147 A of the Criminal Code and sentences range from one to three years’ imprisonment. Pregnancy testing, as a condition of employment, is outlawed under the law.

63. In terms of education and training, the Government has expressed its intention to revise the school curricula to incorporate sections on human rights education, health, sexual and reproductive rights and gender equity.

64. The Gender Unit of the Supreme Court provides training at the national level on domestic violence. The Special Rapporteur was informed that the Department of Justice and Human Rights had conducted a series of training sessions in June 2014, aimed at ensuring the effective implementation of the national human rights policy and its action plan, for 9,000 civil servants across Honduras. The training was also extended to enforcement officers and the military. The National Institute for Women provides the Ministry of Security with guidelines and materials on prevention of domestic violence for

<sup>49</sup> In its response, the Government indicated that reforms to the Domestic Violence Act were under way. There are conflicting views about the integration of criminal provisions within the Act.

<sup>50</sup> See Decree No. 54-2009.

<sup>51</sup> Ipas and UNFPA, “Estudio sobre la situación”.

<sup>52</sup> Ibid.

use in police training centres.<sup>53</sup> The National Autonomous University of Honduras offers the opportunity for civil society organizations to enrol in a 200-hour certification programme on gender and public policy. The Government of Honduras organizes awareness-raising activities during the 16 Days of Activism Against Gender Violence campaign.

65. The minimal attention to, and the lack of effective measures to address, women's empowerment needs is a factor that contributes to continuing insecurity and fear, and precludes the possibility of eliminating all forms of violence against women and girls. The Special Rapporteur expressed her concern at the ineffective measures to address social transformation through activities that are not sustainable and that do not meet the goal of addressing myths and stereotypes about gender roles and responsibilities.

## B. Protection

66. Measures by which States can fulfil their due diligence obligation to protect women from violence include the provision of services such as telephone helplines, health care, counselling centres, legal assistance, access to shelters, protection orders and financial aid for victims.

67. The Department of Health manages the Integral Family Support programme, which offers services to women and adolescents in some municipalities where specialized clinics for battered women have been established.<sup>54</sup> In Tegucigalpa, the Ministry of Health and Doctors Without Borders set up the *servicio prioritario* (priority service) in 2011, which provides free-of-charge emergency attention for people suffering the medical and psychological consequences of violence, including sexual violence.<sup>55</sup> In 2011, Honduras had 16 family counsellors specialized in the provision of assistance to victims of intrafamily violence in the Department of Health. However, they lack sufficient technical and material resources, and their focus is largely on domestic violence cases that are referred by the courts.<sup>56</sup>

68. In March 2014, the Inter-Agency Commission on the Implementation of the Domestic Violence Act, composed of representatives of the National Institute for Women, the Public Ministry, the Department of Health, the Central District Municipality, the National Human Rights Commission and civil society organizations, launched the Centre for Support and Protection of Women's Rights (CAPRODEM) in the city of Comayaguela. The Centre offers orientation, medical, legal and psychological assistance to victims of domestic and intrafamilial violence. The Special Rapporteur was informed of a protocol that outlines the procedures and practices to follow in providing comprehensive assistance to victims of domestic and intrafamilial violence.

69. The Centro MAI in La Ceiba is a one-stop centre where victims receive legal, medical and psychological assistance, but it does not cater exclusively to the needs of women. There are guidelines for the implementation of model comprehensive care for medical personnel and agencies involved in the criminal justice system. The Special Rapporteur expressed concern at the absence of a gender-responsive reception area at the

<sup>53</sup> Central America Women's Network, "The response of international aid agencies to violence against women in Central America: the case of Honduras" (2008).

<sup>54</sup> Ibid.

<sup>55</sup> Doctors Without Borders, "Honduras: MSF makes care for rape survivors a priority" ([www.msf.org/uk/article/honduras-msf-makes-care-rape-survivors-priority](http://www.msf.org/uk/article/honduras-msf-makes-care-rape-survivors-priority)).

<sup>56</sup> Ipas and UNFPA, "Estudio sobre la situación".

Centre and raised the concern of confidentiality and possible breaches of security as regards the management and storing of case files.

70. Moreover, the Special Rapporteur expressed concern at the lack of sufficient facilities, such as shelters for battered women and safe houses for women who have to enter the witness protection programme. A visit was conducted to the only such shelter in Tegucigalpa, which is for victims of domestic violence and run by a non-governmental organization. During the visit, the Special Rapporteur was informed that the Office of the Special Prosecutor for Women had on multiple occasions referred high-risk cases involving women linked to, *inter alia*, murderers, organized crime and gangs, to this shelter. The practice has continued, despite repeated warnings by the director that such practices place the shelter, its staff and its residents in a state of extreme vulnerability, and hinders the ability to effectively provide assistance to victims and guarantee their safety. A similar situation was highlighted in La Ceiba, where a woman under witness protection in relation to the murder of a relative was placed in a shelter for victims of domestic violence. The State has a duty to provide differentiated and appropriate protection or assistance to women victims of violence, based on whether they are witnesses or direct victims of violence. The State cannot justify imposing on third parties its primary responsibility to prevent acts of violence against women and to protect victims who are witnesses in criminal cases.

71. Efforts to provide services at the municipal level include having a gender unit or department with professional staff to address the therapeutic and other needs of women. Unfortunately, such services are linked to donor funding and their sustainability is a source of concern.

### **C. Investigation, prosecution and punishment**

72. There are several ways in which States can fulfil their obligation to ensure perpetrators' accountability for acts of violence against women, including by adopting or amending legislation and strengthening the capacities of the different criminal justice system agencies. In Honduras, the challenges to an effective criminal justice response are the lack of coordination of the different mechanisms and the lack of expertise and resources to conduct credible investigations of crimes relating to gender-based violence, including domestic violence, sexual abuse and femicide.

73. Victims of gender-based violence can file complaints with the police, the National Human Rights Commission, the Office of the Public Prosecutor or the Municipal Offices for Women, among others. Women who file complaints of gender-based offences are often revictimized through the process. In general, no space is set aside where such complaints can be filed in a manner that guarantees the complainant's privacy and security. Often such statements have to be made in open areas in front of the general public, which compounds the complainant's sense of vulnerability. Furthermore, the complainant has to provide her testimony multiple times in the presence of various actors who, although members of different institutions, are nonetheless part of the same criminal justice system. The Special Rapporteur welcomed the fact that the Centro MAI in La Ceiba offered the possibility of a one-stop approach where victims and witnesses recorded their testimony once, thereby avoiding repetition.

74. There are also structural problems associated with the justice system that have a negative impact on the investigation and prosecution of cases, including the lack of police stations, courts and forensic units across the country. The closure or merging of investigation units has also led to concerns about the lack of specificity in prosecuting crimes against women, the lack of appropriate equipment and tools and the lack of human resources, thereby further eroding the need for accountability for such crimes. A further source of concern at both the central and municipal levels is the limited collection of data on the prevalence of, and

on outcomes of, investigations and prosecutions. The Special Rapporteur also wishes to stress that the multiple and intersecting forms of discrimination facing women of indigenous background and Afro-descendant women further affects their access to justice.

75. The Special Rapporteur's findings echo those highlighted in the Inter-American Commission on Human Rights report *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*. In the report, the Commission indicates that the failure to investigate gender-related crimes can be partially attributed to discriminatory sociocultural patterns that discredit women victims and reinforce the perception that such crimes are not priorities. The Special Rapporteur was informed that in some cases, the police laugh or refuse to register complaints from women. Increasing the number of female police officers would encourage a more responsive reporting environment and may help address the issue of frequent withdrawal of complaints, which negatively impacts prosecution rates.

76. While noting the positive measures taken to criminalize femicide, the Special Rapporteur is concerned that very few cases have been tried under the newly created offence. In fact, she was informed that prosecutors have a tendency to take to trial only those cases in which the evidence is considered sufficient to win a conviction. The Special Rapporteur was also informed of difficulties in obtaining evidence, including DNA, due to the shortage of forensic facilities. She was also informed that the presence of a prosecutor was required in order to authorize forensic physicians to begin gathering evidence in rape cases. However interviewees were not in agreement about such a requirement, and were unable to confirm the legal basis for such a requirement.

77. Without making any assumptions about or expressing an opinion on the facts of cases shared during the visit to the national penitentiary, or on the veracity of the testimonies received, the Special Rapporteur notes that the information shared by interviewees seems to indicate serious limitations during the investigative stages of the criminal justice system. Furthermore, the lack of adequate legal assistance for women, as well as the allegations that female offenders seem to face harsher sentences and that women are treated differently from their male counterparts by the criminal justice system, seem to indicate gender stereotyping and gender bias practices by the criminal justice system.

#### **D. Provision of effective remedies, including reparations**

78. The provision of effective remedies involves ensuring the rights of women to access both criminal and civil remedies and the establishment of effective protection, support and rehabilitation services (A/HRC/14/22, p. 1). The failure to provide victims with legal assistance, information and support obstructs the right to effective remedies.

79. Under the Domestic Violence Act, the offender is obliged to provide full compensation to the survivor, including payment for damages and the expenses incurred by victims in dealing with the effects of the acts of violence. No information was shared on the effectiveness of this provision.

80. Following the second regional meeting of the Central American Court of Justice, held in Tegucigalpa, a set of rules for the assistance to victims of gender-based violence with an emphasis on sexual violence was adopted in October 2011. The rules provide for the establishment of a State compensation fund for the harm caused by gender-based violence. Compensation is not limited to financial compensation, but also includes socioeconomic programmes to help victims to rebuild their lives. The rules further provide that remedial measures should include medical and psychological rehabilitation. No information was shared on the effectiveness of this provision.

81. According to interviewees, there is no national assistance office for crime victims and the Government does not provide monetary compensation to such victims. This seems

to corroborate the view that there is a major gap between laws and their implementation and enforcement, which leaves victims with a sense of insecurity, defenselessness and loss of confidence in the justice system.

## **VI. Conclusions and recommendations**

82. The Government has undertaken a number of legislative and institutional initiatives to meet its human rights obligations to address the situation of women and girls in the country. However, these have not been translated into practical improvements in the lives of the majority of women who remain marginalized, discriminated against and at a high risk of being subjected to numerous human rights violations, including violence and sexual and reproductive rights violations. Impunity, socioeconomic disparities and corruption continue to foster a generalized state of violence. The absence of a comprehensive data collection system to guide policy development and to monitor progress in the field of violence against women is a further challenge. Moreover, the failure of the State to exercise its due diligence obligation to investigate, prosecute and punish perpetrators of gender-based violence contributes to an environment of impunity that results in a decline of trust in national mechanisms and the rule of law among the Honduran population.

83. In the light of the above, the Special Rapporteur would like to make the following recommendations.

### **A. Law and policy reforms**

84. The Special Rapporteur recommends that the Government:

(a) Ratify all outstanding international human rights instruments, including the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;

(b) Revise article 332 of the Criminal Code on "unlawful associations" and ensure that the enforcement of this provision does not result in due process rights violations and the criminalization of juveniles, including girls;

(c) Establish a specialized investigation and prosecution unit on femicide to combat impunity in cases of gender-based murder and conduct effective criminal investigations;

(d) Ensure adequate funding to improve existing infrastructure to support victims of gender-based violence and to create new centres that provide psychosocial, legal and residential services throughout the country, paying special attention to the increased vulnerability of indigenous women and Afro-descendant women living in rural areas;

(e) Build the capacity of institutions, such as the National Institute for Women, the National Police, the Office of the Public Prosecutor the Supreme Court of Justice and the Institute of Forensic Medicine, including by increasing their human and material resources;

(f) Strengthen the independence of the National Human Rights Commission in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and ensure that the nomination and selection process is fair and transparent;

(g) Establish an independent national women's commission in accordance with the Paris Principles and which is mandated to receive and investigate complaints about violations of women's rights. The commission must be equipped with sufficient human, technical and financial resources to fulfil its mandate;

(h) Strengthen cross-border cooperation with neighbouring countries with a view to reduce the incidence of trafficking in persons;

(i) Establish and/or strengthen existing monitoring mechanisms to ensure that female workers, particularly those working in the informal sectors, are protected from all forms of exploitation, and hold businesses accountable for practices that negatively affect the health, well-being and security of workers;

(j) Ensure that all police stations, tribunals and courts are equipped with specialized professionals who have received training on gender-based violence and gender sensitivity.

## **B. Accountability**

85. The Special Rapporteur recommends that the Government:

(a) Take effective measures to ensure access to justice and effective remedies for all women victims of violence, and in particular:

(i) Develop mechanisms to ensure a holistic, coordinated and sustained response to violence against women in order to apprehend, prosecute and convict offenders, contribute to the health and safety of the victim and prevent revictimization;

(ii) Ensure the fast and efficient management of cases;

(iii) Ensure that all incidents of violence against women are thoroughly investigated by the police and are prosecuted effectively, and that perpetrators are sanctioned in proportion to the severity of their crime;

(iv) Strengthen fair trial safeguards by ensuring access to legal counsel during all phases of pretrial detention and the investigative stages of cases;

(v) Undertake a comprehensive review of the criminal justice system and ensure that case files relating to the sentencing of female offenders and the prosecution of gender-based violence are reviewed for evidence of gender bias;

(vi) Establish specific safeguards to ensure that women's histories of victimization and abuse are taken into consideration when making decisions about incarceration, especially in respect of custodial sentencing for non-violent crimes;

(vii) Ensure that protection measures are put in place to ensure the safety, privacy and dignity of victims and their families at all stages of the criminal justice process, and ensure that witness and victim protection programmes are established;

(viii) Ensure that all procedures and complaint mechanisms are accessible to women who are victims of violence and their family members and other witnesses without fear of reprisal;

(b) Allocate adequate human, technical and financial resources to ensure that police officers, prosecutors and criminal justice officials can fulfil their mandate and ensure fair and equitable distribution of resources across the country.

**C. Societal transformation, including awareness-raising, addressing gender stereotypes and women's empowerment**

86. The Special Rapporteur recommends that the Government:

(a) Design and launch targeted awareness-raising campaigns to educate and change the mindsets and attitudes of men, women and children through all available means, including schools and the media;

(b) Train and sensitize the media in issues related to women's rights generally and violence against women in particular, in order to contribute to changing the predominant social and cultural beliefs and attitudes that are harmful to women; and address the current sensational reporting practices.

**D. Statistics and data collection**

87. The Special Rapporteur recommends that the Government:

(a) Improve data collection and analysis of incidents of violence and discrimination against women in all sectors, particularly those relating to labour, health, education and the criminal justice system, while ensuring safety and privacy rights throughout the process;

(b) Ensure common, reliable and transparent recording methods on all forms of violence against women, its causes and consequences. Such data should be disaggregated by sex, race, age, ethnicity, geographic location and other relevant characteristics, in order to understand the magnitude, trends and patterns of violence against women in the country, both general and gender-specific;

(c) In cooperation with civil society organizations, develop monitoring and evaluation tools to evaluate progress made in eradicating violence against women in a clear systematic way, and integrate such tools in the country's periodic demographic and health surveys;

(d) Conduct studies to assess the scope of violence against women across Honduras in cooperation with relevant research institutions, civil society organizations and United Nations agencies as appropriate.

**E. Recommendation to United Nations agencies and entities**

88. The Special Rapporteur recommends that, in light of the systemic, widespread and pervasive problem of violence against women and girls in Honduras, there is a need to review the presence, programmes and resources of United Nations agencies that exist in the country in the quest to respond to and prevent violence against women and girls. Technical cooperation and assistance is needed to ensure that this human rights violation is addressed more substantively by United Nations agencies.

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Report of the Special Rapporteur on violence against women,  
its causes and consequences, Rashida Manjoo****Addendum****Mission to the United Kingdom of Great Britain and Northern Ireland\* \*\****Summary*

The present report contains the findings of the Special Rapporteur on violence against women, its causes and consequences, following her visit to the United Kingdom of Great Britain and Northern Ireland from 31 March to 15 April 2014. It examines the situation of violence against women in the country taking into account its causes and consequences and its implications for the effective exercise and enjoyment of all human rights by women. It also discusses the State's responses, through an analysis of the obligation to act with due diligence, to prevent such violence, to protect and provide remedies to women who have been subjected to violence, and to prosecute and punish the perpetrators.

\* The summary is being circulated in all official languages. The report itself, contained in the annex to the summary, is being circulated in the language of submission only.

\*\* Late submission.

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## Annex

*[English only]*

**Report of the Special Rapporteur on violence against women,  
its causes and consequences, on her mission to the United  
Kingdom of Great Britain and Northern Ireland  
(31 March–15 April 2014)**

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## **I. Introduction**

1. At the invitation of the Government, the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, conducted an official visit to the United Kingdom of Great Britain and Northern Ireland, from 31 March to 15 April 2014. She visited London, Leicester, Bristol, Cardiff, Edinburgh, Glasgow, Belfast and Cookstown, where she met both State and non-State actors.

2. In London, consultations were held with the Home Secretary, the Minister of State for Crime Prevention, the Chief Executive of the Office of the Children's Commissioner, the Chief Inspector of Prisons, and representatives from the Government Equalities Office, the Foreign and Commonwealth Office, the Department of Health, the Department of Education and the Ministry of Justice. She also attended a public meeting of the Parliament's Joint Committee on Human Rights.

3. In Scotland, the Special Rapporteur met with the Cabinet Secretary for Justice, the Cabinet Secretary for Commonwealth Games, Sport, Equalities and Pensioners' Rights, the Chief Constable of Police Scotland, the Procurator Fiscal for domestic abuse cases and representatives of the Scottish Government Equality Unit; the Justice Directorate; the Learning Directorate and Education Scotland.

4. In Northern Ireland, she met with the departmental representatives of the Regional Steering Group on the Joint Sexual and Domestic Violence and Abuse Strategy, junior ministers and Gender Equality Strategy officials from the Office of the First Minister and the Deputy First Minister.

5. In Wales, the Special Rapporteur met with the Minister for Communities and Tackling Poverty, the Head of the Equalities Team of the Welsh Government; the Police and Crime Commissioner for South Wales and his deputy; and officials representing the Minister for Local Government and Government Business, the Minister for Education and Skills, the Minister for Housing and Regeneration and the Minister for Health and Social Services.

6. The Special Rapporteur also met representatives of the Equality and Human Rights Commission (in both England and Wales), the Scottish Human Rights Commission and the Northern Ireland Human Rights Commission.

7. The Special Rapporteur wishes to express her appreciation to all her interlocutors, including State authorities, and civil society representatives and especially individual survivors in the four constituent countries. Owing to limitations on the length of documents submitted to the Human Rights Council, it is not possible to convey all the information received in the present report. The report will adopt a general approach and briefly highlight specificity, where it is of relevance.

8. The Special Rapporteur looks forward to a fruitful dialogue with the Government and other stakeholders on the implementation of her recommendations.

## **II. Manifestations of violence against women and girls, its causes and consequences**

### **A. Violence in the family**

9. Domestic violence is one of the most pervasive forms of violence against women in the United Kingdom. Crime surveys for England and Wales reveal that 30 per cent of

women reported having experienced some domestic abuse since the age of 16, and 7 per cent reported having experienced some type of domestic abuse in the course of the last year.<sup>1</sup> In 2012–2013, 77 women were killed by their partners or ex-partners.<sup>2</sup>

10. The incidence of domestic and sexual violence across Northern Ireland during the 2012/13 period included 27,190 incidents of domestic abuse, 5 murders as a direct result of domestic violence and 404 sexual offences with a domestic motivation. During 2011/12, 697 victims and their children were recorded as being homeless as a result of domestic violence.<sup>3</sup>

11. In Scotland for the 2012/13 period there were 60,080 incidents of domestic abuse: 61 per cent involved repeat victimization; and women were the victims in 81 per cent of the incidents in which the sex of the victim was recorded.<sup>4</sup> Furthermore, for homicides recorded in the past 10 years, 50 per cent of female victims, aged between 16 and 70 years, were killed by their partner or ex-partner, while this was the case for only 6 per cent of male victims.<sup>5</sup>

12. A 2014 Europe-wide survey on violence against women found that 29 per cent of respondents in the United Kingdom had experienced physical and/or sexual violence committed by a current and/or previous partner since the age of 15. This is above the European Union average for the survey, which was 22 per cent.<sup>6</sup>

13. The Government's Forced Marriage Unit gave advice or support related to forced marriage in 1,302 cases in 2013. Victims included people thought to be at potential risk, those going through forced marriage, and those who had already been forced to marry, with 82 per cent of female victims and 40 per cent under the age of 18.<sup>7</sup> Ninety-seven cases involved victims with disabilities and 12 involved victims who identified as lesbian, gay, bisexual or transgender.<sup>8</sup>

14. Forced and early marriage affects a wide range of communities in the United Kingdom, including the Irish Traveller community, as well as Afghan, South Asian, Kurdish, Iraqi Kurd, Arab and some African communities. Some interlocutors believe that only some of these communities are targeted by existing policy and service frameworks and other marginalized communities are not included in the discussions and efforts to address the problem.<sup>9</sup>

15. A 2007 study estimates that at least 66,000 women and girls in England and Wales may be living with the consequences of female genital mutilation (FGM) and 21,000 girls

<sup>1</sup> Information provided by the Home Office and also from the Crime Survey for England and Wales 2012/13.

<sup>2</sup> Office for National Statistics, *Focus on violent crime and sexual offences 2012/13* (2013), chap. 4 "Intimate Personal Violence and Partner Abuse".

<sup>3</sup> See [www.dhsspsni.gov.uk/dsva-strategy.pdf](http://www.dhsspsni.gov.uk/dsva-strategy.pdf).

<sup>4</sup> See [www.scotland.gov.uk/Publications/2013/10/2411/downloads/res435527\\_tables\\_1\\_4\\_and\\_9](http://www.scotland.gov.uk/Publications/2013/10/2411/downloads/res435527_tables_1_4_and_9).

<sup>5</sup> See [www.scotland.gov.uk/Resource/0043/00435280.pdf](http://www.scotland.gov.uk/Resource/0043/00435280.pdf), p. 15.

<sup>6</sup> See [http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf).

<sup>7</sup> See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/291855/FMU\\_2013\\_statistics.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/291855/FMU_2013_statistics.pdf).

<sup>8</sup> *Ibid.*

<sup>9</sup> Imkaan submission to the Government's forced marriage consultation, p. 2. For additional information, see [www.gov.uk/stop-forced-marriage](http://www.gov.uk/stop-forced-marriage).

under the age of 8 are deemed to be at risk, based on the countries of origin of women and girls.<sup>10</sup> The Home Office is currently partly funding a study to obtain accurate statistics.

16. The current focus is largely on girls being taken to their countries of origin so that FGM can be carried out during the summer holidays, but concerns were also shared about girls undergoing FGM within the United Kingdom. During the Special Rapporteur's visit, the Crown Prosecution Service announced the first prosecution of a FGM case against a doctor accused of performing FGM and another man charged with intentionally encouraging FGM. This is the first prosecution since the Female Genital Mutilation Act 2003 and the Prohibition of Female Genital Mutilation (Scotland) Act 2005 came into force.

17. According to interviewees, women victims of harmful practices, especially from black and minority ethnic and refugee communities, are more likely to view their experience within the context of family or community expectation, rather than as a form of abuse. Socialization, dependency and the "normalization" of certain practices contribute to the silence of young women and girls in particular.

## **B. Violence in the community**

18. A total of 60,894 sexual offences were recorded by the police for 2013 across England and Wales, representing an increase of 17 per cent compared to the previous year. Rape increased by 20 per cent and other sexual offences by 15 per cent.<sup>11</sup>

19. Media and other reports suggest that some of the increased reporting of sexual offences may be linked to the publicity surrounding the Saville case and Operation Yewtree.<sup>12</sup> This view was not shared by the civil society organizations interviewed.

20. Based on combined data from the 2009–2010 and 2011–2012 periods, an estimated 2.5 per cent of women reported having experienced sexual assault, including attempted assaults.<sup>13</sup> Other incidents of sexual assault, which include indecent exposure, unwanted touching and sexual threats, accounted for 91 per cent of cases, while sexual assault which includes rape and assault by penetration accounted for 21 per cent of all sexual assaults.<sup>14</sup>

21. In Northern Ireland, 1,948 sexual offences and 533 rapes were reported during the 2012–2013 period,<sup>15</sup> a 6.1 per cent increase in overall sexual offences since the 2011–2012 period.<sup>16</sup> In Scotland, the number of sexual offences for the same period was 7,693, representing a 5 per cent increase from the previous year. Crimes of rape and attempted rape increased by 15 per cent and crimes of sexual assault and other sexual offences increased by 3 per cent in Scotland.<sup>17</sup>

<sup>10</sup> Efua Dorkenoo, Linda Morrison and Alison Macfarlane, "A Statistical Study to Estimate the Prevalence of Female Genital Mutilation in England and Wales" (London, FORWARD with the London School of Hygiene and Tropical Medicine and City University, 2007), p. 27.

<sup>11</sup> See [www.ons.gov.uk/ons/dcp171778\\_360216.pdf](http://www.ons.gov.uk/ons/dcp171778_360216.pdf), p. 39.

<sup>12</sup> See [www.nspec.org.uk/globalassets/documents/research-reports/yewtree-report-giving-victims-voice-jimmy-saville.pdf](http://www.nspec.org.uk/globalassets/documents/research-reports/yewtree-report-giving-victims-voice-jimmy-saville.pdf) and [www.ons.gov.uk/ons/dcp171778\\_360216.pdf](http://www.ons.gov.uk/ons/dcp171778_360216.pdf), p. 39.

<sup>13</sup> See <https://www.gov.uk/government/statistics/an-overview-of-sexual-offending-in-england-and-wales>.

<sup>14</sup> Ibid.

<sup>15</sup> See [www.dhsspsni.gov.uk/dsva-strategy.pdf](http://www.dhsspsni.gov.uk/dsva-strategy.pdf), p. 27.

<sup>16</sup> See [www.psm.police.uk/monthly\\_crime\\_bulletin\\_apr-mar\\_12\\_13.pdf](http://www.psm.police.uk/monthly_crime_bulletin_apr-mar_12_13.pdf), p. 2.

<sup>17</sup> See [www.scotland.gov.uk/Resource/0042/00427834.pdf](http://www.scotland.gov.uk/Resource/0042/00427834.pdf), p. 7.

22. According to interlocutors, 38 per cent of women victims of the most serious sexual offences in England and Wales in 2011–2012 did not tell anyone, and 87 per cent did not tell the police.<sup>18</sup> Issues such as victim-blaming and a lack of trust in the justice system discouraged women from disclosing incidents.

23. As regards sexual harassment, it was reported that 42 per cent of young women in London aged between 18 and 34 experienced unwanted sexual attention in 2013.<sup>19</sup> Girls aged between 16 and 18 are reportedly at the highest risk of sexual assault,<sup>20</sup> while women aged between 18 and 29 are at greatest risk of threatening and offensive advances on the Internet.

24. The Special Rapporteur met with young women, the representatives of organizations that represent young women in London and Bristol, as well as with the service providers working with black and minority ethnic girls, who shared concerns regarding the grossly underreported problem of sexual violence experienced by women and girls aged between 11 and 25. A 2010 poll indicates that almost one in three 16–18-year-old girls surveyed had experienced unwanted sexual touching at school.<sup>21</sup> A 2009 study indicates that one in three teenage girls had experienced sexual violence from a partner while in a relationship.<sup>22</sup> Service providers reported an overwhelming normalization of attitudes and behaviours around sexual abuse and harassment in schools and in the community, leading to its acceptance and tolerance, even by victims themselves. Cases of groping, harassment, sexual abuse and other offences, occurring in private and public spaces, including school bathrooms, have been documented.

25. Regarding Internet violence, a recent study found that many women and girls had been exposed to harmful behaviours online, including humiliation, harassment, intimidation and “sexting” as a form of bullying.<sup>23</sup> Furthermore, interviewees stated that boyfriends commonly published, and/or threatened to publish, photographs of consensual sexual activity to harass and manipulate women and even force them to engage in sexual activity with the boyfriend and/or their friends.

26. Young girls involved in gangs are often raped and forced to carry drugs and guns. They are pressured to have sex with boys as an initiation into a gang and have been abducted and sexually assaulted for criticizing gang members. Young women associated with rival gangs are targeted<sup>24</sup> and, in some cases, forced to take part in a “line-up”, where they are made to perform sexual acts on several men.<sup>25</sup> Interviewees allege that some schools turn a blind eye to gang activity in order to protect their reputation.

27. For women and girls from black and minority ethnic communities, the consequences of sexual violence include additional fears, pressure, shame linked to family honour and community norms, stigmatization and rejection. This then leads to further silence in these families and communities.

<sup>18</sup> See [www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/focus-on-violent-crime/stb-focus-on-violent-crime-and-sexual-offences-2011-12.html](http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/focus-on-violent-crime/stb-focus-on-violent-crime-and-sexual-offences-2011-12.html), p. 74.

<sup>19</sup> United Kingdom, YouGov, “Sexual Harassment in the Capital” (2010).

<sup>20</sup> See [www.cps.gov.uk/news/articles/domestic-violence-the-facts-the-issues-the-future/](http://www.cps.gov.uk/news/articles/domestic-violence-the-facts-the-issues-the-future/).

<sup>21</sup> See End Violence Against Women and YouGov poll of 16–18 year olds, October 2010.

<sup>22</sup> See [www.nspcc.org.uk/globalassets/documents/research-reports/partner-exploitation-violence-teenage-intimate-relationships-report.pdf](http://www.nspcc.org.uk/globalassets/documents/research-reports/partner-exploitation-violence-teenage-intimate-relationships-report.pdf).

<sup>23</sup> See [www.nspcc.org.uk/globalassets/documents/research-reports/qualitative-study-children-young-people-sexting-report.pdf](http://www.nspcc.org.uk/globalassets/documents/research-reports/qualitative-study-children-young-people-sexting-report.pdf) %20%E2%80%83.

<sup>24</sup> See [www.theguardian.com/society/2014/jul/19/gangs-rape-lists-sex-assault](http://www.theguardian.com/society/2014/jul/19/gangs-rape-lists-sex-assault).

<sup>25</sup> See [www.rota.org.uk/?q=webfm\\_send/26](http://www.rota.org.uk/?q=webfm_send/26).

### C. Violence perpetrated or condoned by the State

28. The Special Rapporteur visited Hydebank Wood Prison in Northern Ireland, Cornton Vale Prison in Scotland and Holloway Prison for Women and Young Offenders in London.

29. The Special Rapporteur regrets that, despite her repeated requests from the start of the mission, the Government did not permit a visit to Yarl's Wood Immigration Removal Centre. In compliance with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council (Council resolution 5/2, annex) and the terms of reference for fact-finding missions by special rapporteurs/representatives of the Commission on Human Rights (E/CN.4/1998/45, appendix V) governing official country visits, she attempted to visit the Centre independently. However, she was denied entry and was informed by the Centre's director that instructions had been received to deny entry to the Special Rapporteur.

30. There is an increase in women being incarcerated, with black and minority ethnic women overrepresented within prisons and immigration detention centres. A 2007 report indicates that ethnic minority women made up 28 per cent of the women's prison population, representing over three times that of the general population.<sup>26</sup> Furthermore, black and minority ethnic women were more likely to be living in a deprived area, more likely to be subject to poverty, to have experienced the State care system and to find it harder to access educational opportunities. They were also more likely to be remanded in custody than white offenders, and their disadvantage and marginalization continues and is compounded in the criminal justice system.<sup>27</sup>

31. Reports indicate that over half of women in prisons have experienced emotional, physical or sexual abuse, including during childhood.<sup>28</sup> This was confirmed in interviews with inmates and staff, and it was clear that the strong links between violence against women and women's incarceration, whether prior to, during or after incarceration, is not being fully acknowledged or addressed.

32. Information provided by interviewees, and echoed in recent reports, reflects that female inmates are much more likely to repeatedly self-harm, and that they are at high risk of suicide. Concerns were expressed about the Government's failure to protect women from high levels of self-harm while in State custody.<sup>29</sup> It is unfortunate that the Special Rapporteur was not allowed sufficient privacy and access, particularly while visiting Holloway Prison. The hesitation of the staff to allow direct access to inmates adversely affected the gathering of information and this contributed to inmates being reluctant to speak freely.

33. The Special Rapporteur also heard concerns about the number of young women who are incarcerated, which was strikingly evident during the prison visits she conducted.

<sup>26</sup> See [www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf](http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf), p. 23.

<sup>27</sup> See *ibid.*, p. 27.

<sup>28</sup> See **Error! Hyperlink reference not**

**valid.** [www.prisonreformtrust.org.uk/Portals/0/Documents/Prison%20the%20facts%20May%202014.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Prison%20the%20facts%20May%202014.pdf) and [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/252851/womens-custodial-estate-review.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/252851/womens-custodial-estate-review.pdf)

<sup>29</sup> See Equality and Human Rights Commission, *Human Rights Review 2012* ([www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-review-2012/review](http://www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-review-2012/review)) and "Self-harm in prisons in England and Wales: an epidemiological study of prevalence, risk factors, clustering, and subsequent suicide" *The Lancet*, vol. 383, No. 9923, 29 March 2014, pp. 1147–1154. Available from [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(13\)62118-2/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(13)62118-2/fulltext)

Interviewees stated that younger women are more likely to be involved in incidents of self-harm, antisocial behaviour and physical altercations.

34. In a 2013 report, the Chief Inspector of Prisons had raised concerns regarding the inadequate handling of cases, with women's histories of victimization not being sufficiently acknowledged by the authorities, or detainees with clear trafficking indicators not being referred to the relevant mechanisms. Particular concern was expressed about women who had been detained for very long periods, as well as mentally ill women and pregnant women who were detained despite their situations and without a clear justification.<sup>30</sup>

35. A concern raised by the Chief Inspector and non-governmental organizations (NGOs) is the lack of sufficient female staff in female custodial settings. Interviewees stated that women who have experienced rape and sexual violence experience fear and distress about being guarded by male staff, including having male staff enter rooms without notice, and the disregard for privacy, with women often being seen naked or when using the toilet.

36. Concerns were raised about allegations of ill-treatment and abuse within immigration detention facilities, including at Yarl's Wood. Prior to the visit of the Special Rapporteur, there were numerous media reports of allegations of abuses in the detention centre, based on the testimonies of both former Yarl's Wood detainees and former Serco employees.<sup>31</sup> Such reports refer to a culture of bullying and intimidation of detainees, with guards often entering rooms without knocking and women being constantly monitored with no respect for their privacy. More serious allegations include sexual activity, not always consensual, between staff and detainees, and the existence of "blind spots" in the facility where these activities have taken place.<sup>32</sup> The Chief Inspector of Prisons has stated that, even if/when sexual activity was "consensual", this "can never be less than abusive given the vulnerability of the detained population".<sup>33</sup>

37. The Special Rapporteur was also informed of these allegations during her interviews with NGO representatives and through submissions received prior to and after her visit. Some NGOs also reported cases of physical assault and threats by staff during the process of removal and deportation. These include allegations of sexual assaults perpetrated on three occasions against one individual by a Serco employee and the failure of the police to conduct an impartial, adequate or effective investigation into the victim's allegations. The Special Rapporteur also heard directly the allegations of a former Serco service provider, who shared concerns about the safety and well-being of individuals who had been subjected to abuse, or were likely to be subjected to abuse, and who remained vulnerable. Claims include detainees not receiving a full and proper in-depth mental health assessment; the untimely and inadequate treatment of detainees who had subjected themselves to serious self-harm and suicidal acts; the inconsistent application of individual safeguards; and allegations of sexual assaults not being properly investigated.

38. The 2013 report on Yarl's Wood by the Chief Inspector of Prisons was based on more than 50 confidential interviews, and found the establishment to be largely respectful and a safe place for detainees. No evidence was found of a culture of victimization or

<sup>30</sup> See [www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/yarls-wood/Yarls-Wood-2013.pdf](http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/yarls-wood/Yarls-Wood-2013.pdf), p. 5.

<sup>31</sup> Serco is a private company that has run Yarl's Wood since April 2007.

<sup>32</sup> See, for example, [www.theguardian.com/uk-news/2014/may/24/serco-whistleblower-yarls-wood-pressure-immigration](http://www.theguardian.com/uk-news/2014/may/24/serco-whistleblower-yarls-wood-pressure-immigration) and [www.theguardian.com/uk-news/2013/sep/14/detainees-yarls-wood-sexual-abuse](http://www.theguardian.com/uk-news/2013/sep/14/detainees-yarls-wood-sexual-abuse).

<sup>33</sup> See [www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/yarls-wood/Yarls-Wood-2013.pdf](http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/yarls-wood/Yarls-Wood-2013.pdf), p. 5.

systematic abuse.<sup>34</sup> The reaction of some NGO service providers to this finding is that such a claim could be partly explained because victims interviewed had not yet been granted refugee status, and that it is usually former detainees who will talk more freely about their experiences, both positive and negative, after their status is secured.<sup>35</sup>

#### **D. Violence linked to the transnational sphere**

39. The United Kingdom is a destination country for migrant and asylum-seeking women, with approximately 30 per cent of asylum applications being submitted by women in their own right since 2003. In 2012, 6,071 of a total of 21,785 asylum seekers were women.<sup>36</sup>

40. A recent report indicates that over 85 per cent of the interviewees claimed they had been raped, tortured or both in their country of origin.<sup>37</sup> While Home Office statistics do not indicate whether gender-based persecution is the basis of a woman's claim, research reflects the high prevalence of gender-based violence suffered by asylum-seeking women in their country of origin, during transit or within the United Kingdom.<sup>38</sup>

41. Concerns were raised regarding the inadequate assessment made by the Home Office to identify and acknowledge women's past experiences of violence when applying for asylum. A 2013 report states that, "women are less likely than men to receive a correct initial decision on their asylum claim".<sup>39</sup> It is estimated that approximately one third of women are granted asylum on appeal, with cases being overturned because of poor initial credibility assessments.<sup>40</sup>

42. The Office of the United Nations High Commissioner for Refugees has also voiced concerns that women asylum seekers may not have their protection needs appropriately assessed, or have the ability to speak in confidence about any gender-based violence they might have experienced, or be experiencing. Also, the use of the Detained Fast Track Processes does not favour the proper identification and examination of cases involving gender-related violence or trafficking, owing to the speed with which asylum decisions are made, and the limited involvement of claimant's legal representatives.<sup>41</sup>

43. Another issue of concern highlighted is the situation of migrant domestic workers in the United Kingdom. The Special Rapporteur met with a large group of women domestic workers and representatives of NGOs providing support and assistance to migrant domestic workers. The testimonies of abuse included accounts of women being forced to work very long hours, both cleaning and/or taking care of children; not being allowed to take leave

<sup>34</sup> See [www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/yarls-wood/Yarls-Wood-2013.pdf](http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/yarls-wood/Yarls-Wood-2013.pdf)

<sup>35</sup> See [www.refugeewomen.co.uk/wp-content/uploads/2014/01/WRWDetained.pdf](http://www.refugeewomen.co.uk/wp-content/uploads/2014/01/WRWDetained.pdf), p. 31.

<sup>36</sup> See [www.asylumaid.org.uk/wp-content/uploads/2014/04/Asylum-Aid-SRVAV-briefing-April-2014.pdf](http://www.asylumaid.org.uk/wp-content/uploads/2014/04/Asylum-Aid-SRVAV-briefing-April-2014.pdf)

<sup>37</sup> See [www.refugeewomen.co.uk/wp-content/uploads/2014/01/WRWDetained.pdf](http://www.refugeewomen.co.uk/wp-content/uploads/2014/01/WRWDetained.pdf), p. 6.

<sup>38</sup> See <http://genderviolence.lshtm.ac.uk/files/2009/10/Asylum-seeking-Women-Violence-and-Health.pdf> and [www.refugeecouncil.org.uk/assets/0001/7039/RC\\_VWP-report-web.pdf](http://www.refugeecouncil.org.uk/assets/0001/7039/RC_VWP-report-web.pdf)

<sup>39</sup> See [www.publications.parliament.uk/pa/cm201314/cmselect/cmha/ff71/71.pdf](http://www.publications.parliament.uk/pa/cm201314/cmselect/cmha/ff71/71.pdf), p. 22.

<sup>40</sup> See [www.asylumaid.org.uk/data/files/unsustainableweb.pdf](http://www.asylumaid.org.uk/data/files/unsustainableweb.pdf), p. 67.

<sup>41</sup> See United Nations Refugee Agency, Quality Initiative Report, February 2007–March 2008 ([www.unhcr.org.uk/fileadmin/user\\_upload/pdf/5\\_QI\\_Key\\_Observations\\_and\\_Recommendations.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/pdf/5_QI_Key_Observations_and_Recommendations.pdf)) and Quality Integration Report on the Detained Fast Track, August 2010 ([www.unhcr.org.uk/fileadmin/user\\_upload/pdf/First\\_Quality\\_Integration\\_Project\\_Report\\_Key\\_Findings\\_and\\_Rec\\_01.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/pdf/First_Quality_Integration_Project_Report_Key_Findings_and_Rec_01.pdf)).

days during the year; being constantly shouted at by employers; not being allowed to talk to anybody; being forced to sleep in inadequate rooms, such as utility rooms, kitchens or children's rooms; and having their salaries withheld. Furthermore, testimonies were shared of domestic workers being subjected to coercion and deceit, with some employers deliberately trying to keep them uninformed and isolated, and misleading them about their legal status, their rights and the employer's power to have them incarcerated or deported. Migrant domestic workers' families usually depend on their remittances and thus women often feel they do not have a choice but to remain in exploitative or abusive situations.<sup>42</sup> The Special Rapporteur also heard allegations from NGOs that many domestic workers are trafficked into the country.

44. The new overseas domestic worker visa has raised further concerns, including because it affects whether domestic workers can change employers or renew their visas, even in abusive employment situations. NGO service providers have documented how migrant domestic workers with the new visa are clearly experiencing worse treatment by employers, as compared to those who entered the United Kingdom on the previous visa.<sup>43</sup>

### III. Implications for effective citizenship rights

#### A. Civil and political rights

45. Worldwide, inequality, discrimination and violence against women are barriers to women's full participation in public and political life.

46. In July 2013, concerns were raised by the Committee on the Elimination of Discrimination against Women, including that women continue to be significantly underrepresented in certain occupations, including in Parliament, in the judiciary and on public sector boards. The United Kingdom ranks eleventh among member States of the European Union in terms of female representation, and fiftieth worldwide (see CEDAW/C/GBR/7, para. 88). The Committee was particularly concerned at the low representation in political life of black and ethnic minority women and women with disabilities (see CEDAW/C/GBR/CO/7, para. 42). Black and ethnic minority women represent 5.8 per cent of the population, yet make up less than 1 per cent of councillors at the local government level (see CEDAW/C/GBR/7, para. 93).

47. In Northern Ireland, concerns were raised with the Special Rapporteur regarding the exclusion of women from the peacebuilding processes and how their experiences of violence during and after the conflict have been mostly unrecognized. Calls have been made by some international human rights mechanisms for the implementation of Security Council resolution 1325 (2000), including the development of the relevant national action plans.

48. In 2010, women constituted 24 per cent of professional judges in England and Wales and 21 per cent in Scotland.<sup>44</sup> In 2012, women held 43 per cent of judicial posts in Northern Ireland, but there are no women on the High Court bench.<sup>45</sup>

<sup>42</sup> See [www.kalayaan.org.uk/documents/Kalayaan%20Oxfam%20report.pdf](http://www.kalayaan.org.uk/documents/Kalayaan%20Oxfam%20report.pdf), p. 19.

<sup>43</sup> See [www.kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf](http://www.kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf).

<sup>44</sup> See [www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf), p. 277.

<sup>45</sup> United Kingdom, House of Commons, "Women in Public life, the Professions and the Boardroom", standard note No. SN5170.

49. Regarding access to justice for women victims of violence, a crucial concern raised was in regard to the changes and cuts to legal aid, following the adoption of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Through this law, the majority of family law proceedings, including disputes involving access to/residence of children, were reportedly made ineligible for legal aid funding. Exceptions were made for applications for protective injunctions for domestic violence or forced marriage, as well as for divorce, matrimonial finance and cases relating to children where evidence of violence is provided.<sup>46</sup> Advocates argue, however, that the evidence required to demonstrate domestic violence places an onerous burden upon victims.<sup>47</sup> For example, women are required to pay for documentary evidence (£50 for a letter from their doctor and £60 for a memorandum of conviction), even when on welfare benefits, with no recourse to public funds.<sup>48</sup> Owing to the strict criteria, some of those excluded are victims who reached out to women's support groups, but not to the authorities; women who called the police but whose calls were unanswered; or women who did not call the police or see a doctor, because they suffered no serious physical injuries.<sup>49</sup>

50. In family law proceedings, victims are forced to face their perpetrators in court without the assistance of lawyers, while perpetrators can often afford legal representation. According to interviewees, women who seek justice and protection by participating in law family proceedings are frequently fearful of attending court and having to interact with the perpetrator.

51. Furthermore, the disproportionate effect that the legal aid cuts are having on black and minority ethnic women was consistently raised, as these women are more likely to experience poverty or very low levels of income. Women with disabilities and those from migrant communities, especially women who do not speak English, and women who are on low incomes or have "no recourse to public funds", were also identified as more vulnerable to violations of human rights and less likely to be able to access justice.

52. The Special Rapporteur also heard concerns about the emergence of alternative sources of support and arbitration within certain communities. Within such forums, "unaccountable community or religious leaders" settle matters in a way that does not necessarily provide justice to women. These include Jewish beth dins and Muslim arbitration tribunals that use the Arbitration Act 1996 to formally pronounce religious judgements in cases of divorce, child custody, domestic violence, forced marriage and inheritance. In these forums, emphasis is placed on family reconciliation, which often results in women being forced back into abusive families, divorce is discouraged and women are deterred from reporting or pursuing criminal proceedings.

## **B. Economic and developmental rights**

53. Many women continue to be disproportionately overrepresented in part-time jobs, temporary work and self-employment and often work in low-wage, feminized sectors of the

<sup>46</sup> See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/345515/legal-aid-evidence-for-private-family-law-matters.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/345515/legal-aid-evidence-for-private-family-law-matters.pdf).

<sup>47</sup> The criteria, provided through regulations 33 and 34, include protective injunctions for domestic violence, referrals to a multi-agency risk assessment conference, or reports from social services.

<sup>48</sup> See [http://thewomensresourcecentre.org.uk/wp-content/uploads/Appendix-28\\_Legal-aid\\_FINAL2.pdf](http://thewomensresourcecentre.org.uk/wp-content/uploads/Appendix-28_Legal-aid_FINAL2.pdf).

<sup>49</sup> Ibid.

economy.<sup>50</sup> They are also affected by unpaid care work and responsibilities. This is an issue that was particularly highlighted during interviews with NGOs who work with the black and minority ethnic communities.

54. Responding to and preventing violence against women needs to include basic survival needs, such as subsidized housing, income support, childcare and educational support.<sup>51</sup> However, in the current context of economic and financial constraints, interviewees claimed that there have been cutbacks to funding, which has impacted the provision of basic support services. Since 2010, the United Kingdom has adopted a fiscal policy that has been characterized by sustained reductions in public spending.<sup>52</sup> These austerity measures were originally launched in the aftermath of the 2008 financial crisis, with the aim of reducing the country's budget deficit over five years.<sup>53</sup> Such measures have been extended to apply until the fiscal year 2017/18.<sup>54</sup>

55. The devolution of authority to local authorities (referred to as localism by interviewees) on issues such as service provision has reportedly led to changes to commissioning models, including open tendering and short-term commissioning, and the increased participation of sectors that do not necessarily have the expertise to provide responsive and appropriate services. Submissions sent to the Special Rapporteur state that this move has come at the expense of the expertise and experience of community-based service providers. The increase in the commissioning of gender-neutral services, which disregard the specific needs of women and girls, was also highlighted as a concern.

56. The need for greater prioritization and investment by the National Health Service in tackling violence against women and girls was an issue raised by numerous interviewees. One report highlights recommendations to improve the provision of care and support for victims, including improved identification of victims, provision of support and appropriate referrals, and the commissioning of specialist services.<sup>55</sup> According to the Equality and Human Rights Commission, the health sector is yet to invest the resources necessary to treat violence against women as a major public health issue.<sup>56</sup>

57. Furthermore, owing to their experiences of violence and abuse, women victims of violence often present symptoms of depression and other mental health problems. The Government has recognized that there is a link between sexual and domestic violence, and mental health illness, and has developed mental health and suicide prevention strategies.<sup>57</sup> However, suicide still carries considerable social stigma and, together with self-harm, remains a hidden phenomenon in many communities. NGOs interviewed noted the insufficient attention paid to the particular intersections of violence, poverty and structural inequality, which is experienced by black and minority ethnic women and which places them at particular risk of suffering depression, anxiety and other mental health issues. They

<sup>50</sup> See [www.fawcettsociety.org.uk/wp-content/uploads/2014/08/The-Changing-Labour-Market-2.pdf](http://www.fawcettsociety.org.uk/wp-content/uploads/2014/08/The-Changing-Labour-Market-2.pdf), p. 3.

<sup>51</sup> See [www.engender.org.uk/content/publications/UNSR-briefing-final---March-2014---External.pdf](http://www.engender.org.uk/content/publications/UNSR-briefing-final---March-2014---External.pdf), p. 6.

<sup>52</sup> See [www.oxfam.org/sites/www.oxfam.org/files/cs-true-cost-austerity-inequality-uk-120913-en.pdf](http://www.oxfam.org/sites/www.oxfam.org/files/cs-true-cost-austerity-inequality-uk-120913-en.pdf), Budget of June 2010.

<sup>53</sup> See <https://www.gov.uk/government/speeches/autumn-statement-2012-chancellors-statement>.

<sup>54</sup> See [www.health.org.uk/media\\_manager/public/75/external-publications/Responding-to-violence-against-women-and-children%E2%80%93the-role-of-the-NHS.pdf](http://www.health.org.uk/media_manager/public/75/external-publications/Responding-to-violence-against-women-and-children%E2%80%93the-role-of-the-NHS.pdf), pp. 5–8.

<sup>55</sup> Response of the Equality and Human Rights Commission to the Joint Committee on Human Rights inquiry into violence against women and girls, p. 8.

<sup>56</sup> See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/216928/Preventing-Suicide-in-England-A-cross-government-outcomes-strategy-to-save-lives.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216928/Preventing-Suicide-in-England-A-cross-government-outcomes-strategy-to-save-lives.pdf).

further explained that, while specific services to address the mental health needs of black and minority ethnic women are sometimes found in larger cities, this is not the case in smaller towns, where women are often further isolated from their support networks and families.

58. In Northern Ireland, a concern raised by interviewees is the restrictive abortion law, under which termination of pregnancy is illegal unless it is necessary to preserve the life or health of women, but is not allowed in cases of rape or incest, or malformation of the foetus. The Special Rapporteur was informed of a 16-week public consultation launched by the Northern Ireland Government on a revised set of guidelines for the lawful termination of pregnancy.<sup>58</sup> However, no public consultation regarding the abolition of the law criminalizing abortion has been undertaken (see A/63/38, paras. 288 and 289).

59. Given the current economic realities, including the rising costs of living, testimonies reflect the weekly struggle, with women having to make hard choices regarding the purchase of basic foods, expenditure on children and meeting other household needs. Interviewees highlighted the detrimental and disproportionate impact of the rising cost of living, particularly for women with no income or with fixed incomes that are not in line with inflation, as well as for women who rely on benefits. The situation is even worse for asylum-seeking women who do not benefit from any social welfare, such as failed asylum-seeking women who cannot claim benefits such as Housing Benefit, Job Seeker's Allowance, Child Benefit or Family Tax Credit.

60. Domestic violence is recognized as a major cause of homelessness for women and is reportedly the fourth most common reason given for an application for housing in Scotland.<sup>59</sup> Changes to housing support in the United Kingdom, and the withdrawal of the Spare Room Subsidy, also known as the "bedroom tax", are reportedly reducing women's ability to find rental properties owing to the unavailability of suitably sized accommodation (see A/HRC/25/54/Add.2, para. 46). This is also causing bottlenecks in shelters, as women are unable to leave, thereby preventing other women and children getting safe accommodation and support.<sup>60</sup>

61. Women with disabilities shared concerns regarding abuse, fear of disclosure, leaving and homelessness. Interviewees stated that local authorities were failing to offer them priority housing based on both their disability and them being victims of domestic violence.

62. NGOs, particularly in Scotland and the North-East of England, also expressed concerns regarding the situation of destitute women asylum seekers, particularly those who have had their asylum claims refused. The Special Rapporteur heard of women often sleeping on the streets, and having to rely on the goodwill of friends or on food parcels from churches and from charity organizations.<sup>61</sup> Destitution puts women at further risk of experiencing violence, including sexual violence, or having to engage in transactional sexual activities in exchange for food and shelter. A 2012 study shows that of 67 women who were refused asylum interviewed, 67 per cent had become destitute, and of those 16 per cent had experienced sexual violence while destitute.<sup>62</sup>

63. The right to work and the right to social security are integral to the right to an adequate standard of living. Cutbacks in public spending often lead to increased unemployment. In the United Kingdom, the cuts to State spending have mainly affected

<sup>58</sup> See [www.dhsspsni.gov.uk/termination-pregnancy-responses-2013.pdf](http://www.dhsspsni.gov.uk/termination-pregnancy-responses-2013.pdf).

<sup>59</sup> See [www.scotland.gov.uk/Resource/Doc/328505/0106198.pdf](http://www.scotland.gov.uk/Resource/Doc/328505/0106198.pdf), p. 3.

<sup>60</sup> See [http://wbg.org.uk/pdfs/Womens-Aid-impact-of-cuts-on-domestic-abuse-services-Scotland\(1\).pdf](http://wbg.org.uk/pdfs/Womens-Aid-impact-of-cuts-on-domestic-abuse-services-Scotland(1).pdf).

<sup>61</sup> See [www.asaproject.org/wp-content/uploads/2013/03/no-credibility.pdf](http://www.asaproject.org/wp-content/uploads/2013/03/no-credibility.pdf).

<sup>62</sup> See [www.refugeewomen.co.uk/wp-content/uploads/2015/04/refused.pdf](http://www.refugeewomen.co.uk/wp-content/uploads/2015/04/refused.pdf).

social security and approximately 900,000 public sector jobs were due to be lost between 2011 and 2018.<sup>63</sup> This estimate has now risen to a 1.1 million.<sup>64</sup>

### C. Social and cultural rights

64. Generally, social and cultural constructions of women's roles and status perpetuate stereotypes that disadvantage women and preclude the enjoyment of all their human rights, including the right to a life free of violence.

65. Practices justified on the basis of customs, religions and traditions also facilitate violence against women and girls in some instances. Negative and over-sexualized media portrayals of women and girls include women being predominantly represented in passive and stereotyped roles and often portrayed as victims. They are also far more likely to be referred to in terms of their age, physical appearance or family role in the media.<sup>65</sup> The proliferation of a "celebrity culture" and of beauty advertising has had a tremendous effect on girls' body image, with 29 per cent of 11–16 year girls being "not at all happy with the way they look".<sup>66</sup> This is further compounded by the stereotyped portrayal of rape and abuse victims; the underrepresentation of positive news items related to women; and men's domination in the leadership and shaping of the media industry.<sup>67</sup>

66. Other concerns regarding stereotyping include the narratives around single parenting, which often demonize single mothers; the infantilization of women with disabilities; the stereotyped assumptions about the skills and backgrounds of refugee, asylum-seeking and migrant women; and the stereotyping of lesbian, bisexual and transgender women in respect of relationships, family and reproductive choices.<sup>68</sup>

67. In the case of black and minority ethnic communities, interviewees explained how they tend to be represented by "self-styled community (business and religious) male leaders", who rarely represent the interests of women and increasingly adhere to patriarchal religious norms and values. This has resulted in the increased surveillance and policing of women, and the denial and silencing of issues that affect them, including gender-based violence. This situation is further exacerbated when government and statutory agencies seek to accommodate religious norms and values in the name of "religious sensitivity".

68. NGO service providers also expressed serious concerns about the problematic narratives surrounding violence against black and minority ethnic women and girls. Such narratives are often framed solely within notions of culture, community or religion, rather than within the larger context of a general patriarchal and discriminatory societal approach to women and girls. The consequence is that legal and policy responses are then limited to some harmful practices, such as early/forced marriages of young women and girls or female genital mutilation, as applicable to certain communities. This then ignores the harms emanating from other sexist practices that are prevalent in the United Kingdom, and which impact women and girls of all ethnic and racial backgrounds.

<sup>63</sup> See [www.ifs.org.uk/budgets/gb2013/gb2013.pdf](http://www.ifs.org.uk/budgets/gb2013/gb2013.pdf), p. 5.

<sup>64</sup> See <http://cdn.budgetresponsibility.independent.gov.uk/March-2013-EFO-44734674673453.pdf>, p. 76.

<sup>65</sup> See [www.fawcettsociety.org.uk/our-work/issues/attitudes-media-culture/](http://www.fawcettsociety.org.uk/our-work/issues/attitudes-media-culture/).

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> See [www.engender.org.uk/content/publications/Gender-equality-and--Scotlands-constitutional-futures.pdf](http://www.engender.org.uk/content/publications/Gender-equality-and--Scotlands-constitutional-futures.pdf), p. 34.

#### **IV. Challenges in fulfilling the State's obligation to act with due diligence to eliminate violence against women**

69. The United Kingdom has committed to protecting and promoting the rights of women through its ratification of numerous international human rights instruments. The Government has also committed to ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). Furthermore, numerous laws, policies and programmes have been put in place to address women's rights generally, and violence against women specifically.

70. The present section examines the measures taken by the Government of the United Kingdom to fulfil its international obligations, and also the challenges it faces to prevent, investigate, prosecute and punish violence against women, as well as to protect victims and provide them with effective remedies.

##### **A. Prevention**

71. Prevention is one of the guiding principles of the United Kingdom strategy on violence against women, and it aims to prevent violence against women and girls from happening in the first place by challenging the attitudes and behaviours which foster it, and intervening early to prevent it. Yet shortcomings remain in ensuring the promotion of gender equality and challenging harmful attitudes and behaviours, including among children and teenagers, especially at schools. According to interviewees, the work on issues such as bullying is often de-gendered, and the expansion of faith schools has led to reticence to provide education on sex, sexuality and relationships.

72. A 2013 study found a lack of high-quality, age-appropriate sex and relationships education in more than a third of the schools inspected in England.<sup>69</sup> Personal, social, health and economic education modules are not compulsory and, when offered by schools, often avoid discussion of sexual and emotional feelings and issues such as sexual abuse, homosexuality and pornography. The report also highlights how children and young people may be left at risk when they are not taught appropriate language or how to describe unwanted sexual behaviours, or where to go to for help.<sup>70</sup>

73. During the mission, no information was forthcoming as regards specific government programmes at the national level that address strategies to prevent violence aimed at women.

74. As regards the legal framework, while there is no general, stand-alone law on violence against women applicable to the United Kingdom as a whole, there are some legal instruments that aim to address the issue. These include the Equality Act 2010, the Domestic Violence Crime and Victims Act 2004, the Sexual Offences Act 2003, the Policing and Crime Act 2009, the Crime and Security Act 2010, the Forced Marriages (Civil Protection) Act 2007, the Female Genital Mutilation Act 2003 and the Protection from Harassment Act 1997. The Domestic Violence Immigration Rule was also introduced in 2002. In terms of harmful practices, new offences were recently introduced to criminalize forced marriage through the Anti-Social Behaviour, Crime and Policing Act 2014.

<sup>69</sup> See [www.gov.uk/government/publications/not-yet-good-enough-personal-social-health-and-economic-education](http://www.gov.uk/government/publications/not-yet-good-enough-personal-social-health-and-economic-education), p. 7.

<sup>70</sup> Ibid.

75. The Special Rapporteur heard concerns regarding current gaps in the law, including the lack of a specific prohibition of simulated rape pornography in the Criminal Justice and Courts Bill; the lack of adequate regulation in relation to the display of highly sexualized images of women in men's magazines; the non-existence of the criminal offence of "intentionally seriously impairing a person's psychological integrity through coercion or threats"; and the lack of provisions in the Immigration Rules to reflect the relevance of taking into account issues other than domestic violence against women and girls.<sup>71</sup> Concerns were also raised about the criminalization of forced marriage and its negative effect on reporting.<sup>72</sup>

76. NGOs also expressed concerns about the use of terms such as "domestic abuse" in legislation, which tends to conflate interpersonal/spousal violence with broader family violence incidents, and how is leading to gender neutrality in legislative developments. A positive exception was found in the practice of the Scottish Government, which uses the definition proposed in the Declaration on the Elimination of Violence against Women, which clearly identifies the gendered nature of violence against women and, more importantly, frames it as a human rights violation.

77. Regarding policies and programmes, in 2010, the Government of the United Kingdom developed the strategy "A Call to End Violence against Women and Girls", which is applicable in England and Wales. As part of the strategy, annual action plans are developed in consultation with relevant stakeholders and monitored by government departments. The Government's five-year strategy is aimed at improving access to justice, services and support for crime victims and witnesses. Its implementation is overseen by an interministerial group chaired by the Home Secretary. Furthermore, a stakeholder group, which consists of State and non-State actors, serves as an important forum for exchange of information and expertise and evaluation and identification of ways to improve the Government's responses to violence against women.

78. Similar initiatives have also been developed in the constituent countries. The Scottish Government has developed a draft violence against women strategy.<sup>73</sup> In Northern Ireland, a public consultation was undertaken in 2014 to adopt the Stopping Domestic and Sexual Violence and Abuse Strategy.<sup>74</sup> In Wales, the "Right to Be Safe" strategy was adopted in 2010 and has been coupled with efforts to draft new legislation to end violence against women, domestic abuse and sexual violence, in consultation with specialized third sector organizations.<sup>75</sup>

79. Efforts have been made to design and launch campaigns to reach out to young people and educate them about the various manifestations of violence, including in the home, in schools, in social media and on the Internet. The national prevention campaign

<sup>71</sup> See response of the Equality and Human Rights Commission to the Joint Committee on Human Rights inquiry into violence against women and girls, March 2014. Available from [www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/response-equality-and-human-rights-commission-joint-committee-human-rights-inquiry-violence-against-women](http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/response-equality-and-human-rights-commission-joint-committee-human-rights-inquiry-violence-against-women).

<sup>72</sup> See <https://www.opendemocracy.net/5050/amrit-wilson/criminalising-forced-marriage-in-uk-why-it-will-not-help-women>.

<sup>73</sup> Strategy document available from [www.scotland.gov.uk/Topics/People/Equality/violence-women/strategydocuments](http://www.scotland.gov.uk/Topics/People/Equality/violence-women/strategydocuments).

<sup>74</sup> See [www.dhsspsni.gov.uk/dsva-strategy.pdf](http://www.dhsspsni.gov.uk/dsva-strategy.pdf).

<sup>75</sup> In 2010, the Welsh Government published "The Right to be Safe" (<http://gov.wales/docs/dsjlg/publications/commsafety/100325besafefinalenv1.pdf>). The Scottish Government is developing its own strategy on violence against women, which is likely to be published in summer 2014 ([www.scotland.gov.uk/Topics/People/Equality/violence-women/strategydocuments](http://www.scotland.gov.uk/Topics/People/Equality/violence-women/strategydocuments)).

"This is Abuse" is noteworthy and has been welcomed by the relevant stakeholders. It encourages teenagers to rethink their views about rape, consent, violence and abuse. The work by the Office of the Children's Commissioner includes a focus on child sexual exploitation and specific research on sexual exploitation within gangs and other social groups; abuse of children in care; access and exposure to pornography; and children's understandings of sexual consent.

80. While most stakeholders interviewed welcomed such initiatives, concerns were shared about the lack of a comprehensive and coordinated strategy to adequately address violence against women and girls across the entire country. The lack of a central budget and the emphasis on local decision-making are among potential risks to the effective implementation of the United Kingdom strategy.<sup>76</sup>

81. The shift from gender specificity to gender neutrality in the Government's responses to violence against women, which has occurred to the detriment of gender-specific initiatives and programmes, was also of concern to many stakeholders. It was stressed that policies and practices on equality generally, and those on violence against women in particular, are increasingly gender neutral and aim for equal treatment for all, thereby disregarding the need for special measures that acknowledge difference and recognize that women are disproportionately impacted by violence, inequality and discrimination.

82. Preventive measures on violence against women also require the development of national data collection systems. In July 2014, a parliamentary report raised concerns about the alleged underrecording of crime by police in England and Wales. The evidence pointed to manipulated police figures regarding rape and sexual abuse, which are commonly recorded as "crime-related" incidents or "no crimes".<sup>77</sup> This is reportedly due to "lax police compliance with the agreed national standard of victim-focussed crime recording", as well as pressure to achieve numerical targets.<sup>78</sup> Furthermore, the data currently collected tends to be part of a wider analysis of violent crime, rather than a specific assessment on the prevalence of violence against women and girls.<sup>79</sup>

83. In terms of training and capacity-building, the Special Rapporteur was made aware of progress made in the criminal justice system, particularly through the Crown Prosecution Service, which has worked with experts from the women's sector and academics to improve training for lawyers and judges. The Crown Office in Scotland has also implemented training programmes for staff and has revised its guidelines on domestic violence. Service providers welcomed such measures but raised concerns, as such training is mainly focused on the prosecution aspect of violence against women, as opposed to a wider range of practitioners involved in preventive work, such as the police and health and education professionals.

## B. Protection

84. Protection provisions for victims of domestic violence, some of which came into existence in England and Wales through the Family Law Act 1996, were strengthened through the Domestic Violence Crime and Victims Act 2004 (which covers the four

<sup>76</sup> See [www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/response-equality-and-human-rights-commission-joint-committee-human-rights-inquiry-violence-against](http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/response-equality-and-human-rights-commission-joint-committee-human-rights-inquiry-violence-against)

<sup>77</sup> See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/329819/41437\\_Cm\\_8910\\_web\\_accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329819/41437_Cm_8910_web_accessible.pdf)

<sup>78</sup> Ibid.

<sup>79</sup> Response of the Equality and Human Rights Commission to the Joint Committee on Human Rights inquiry into violence against women and girls, p. 5.

constituent countries). Non-molestation orders were amended to provide a criminal sanction for non-compliance, with a maximum sentence of five years' imprisonment. The act also provides for restraining orders, which can be imposed upon acquitted defendants when a court deems it necessary to protect a person. The 2004 Act also deemed "common assault", an offence for which the police can make an arrest at the scene, without a warrant.

85. The Crime and Security Act 2010, applicable throughout the United Kingdom, provides for a new civil protection order, the domestic violence protection order, which aims to give victims time, space and support to consider their options. The order places conditions on perpetrators, including restricting/removing perpetrators from households, and preventing contact with, or molestation of victims.<sup>80</sup> An evaluation report published in 2013 made some recommendations for better implementation of the order, including ensuring that police must routinely give reasons when neither a charge nor a protection notice is issued; the proactive monitoring of the protection notice; the enhancing of police training on these orders; and the need for clear guidance regarding "no contact", "non-molestation", and child contact arrangements.<sup>81</sup>

86. The Children's Act 1989 provides for the prohibited steps order, which can be granted by a court to prevent, among other steps, a parent from taking a child without the express permission of the other parent. The Forced Marriage (Civil Protection) Act 2007 allows a person threatened with forced marriage to apply for a forced marriage protection order before a court. The order may require such measures as confiscation of the passport of the wrongdoer and restrictions on their contact with the victim, and it can be issued against any person who aids, abets or encourages a forced marriage.

87. The Special Rapporteur was also informed of the Domestic Violence Disclosure Scheme in England and Wales that provides a framework for disclosing information to potential victims of domestic violence and abuse.<sup>82</sup> The aim of the scheme is to disclose information to an individual about previous violent offending by their partner. The disclosure might be triggered by a request made by a member of the public directly or by information that the police deem important to reveal to a potential victim.<sup>83</sup>

88. Some initiatives have been launched by Police Scotland to ensure coordinated and adequate police responses to domestic abuse. These include the establishment of the Domestic Abuse Coordination Unit, which works closely with local police units; the Domestic Abuse Investigation Units in every division, with an emphasis on proactive investigation; and the Domestic Abuse Task Force, to target "high tariff" perpetrators and undertake complex and protracted investigations. Also, the Domestic Abuse Multi-Agency Tasking and Coordinating process was set up in each of the 14 territorial police divisions, to proactively target high-risk perpetrators and reduce, among other issues, the number of domestic related homicides and repeat victims. A domestic abuse toolkit was developed, which identifies best practices when dealing with victims and perpetrators and provides a framework for police to follow. Furthermore, an online/third party/remote reporting system has been set up to encourage reporting, particularly among black and minority ethnic and other hard-to-reach communities. The Special Rapporteur was informed of a joint protocol signed between the police and prosecution services that outlines the procedures and practices that must be followed to address domestic abuse.

<sup>80</sup> See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/260897/horr76.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260897/horr76.pdf), p. 4.

<sup>81</sup> *Ibid.*, p. 7.

<sup>82</sup> See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/260894/DVDS\\_assessment\\_report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260894/DVDS_assessment_report.pdf).

<sup>83</sup> *Ibid.*, p. 2.

89. As regards sexual violence, since 2013, the Rape Support Fund has allowed for the support and extension of NGO-run Rape and Sexual Abuse Support Centres.<sup>84</sup> Furthermore, 45 Government-run, one-stop Sexual Assault Referral Centres have been established throughout the country. The Special Rapporteur visited one of the centres in Antrim, Northern Ireland, which is the region's first purpose-built centre. It provides specialized services and support to victims, while also encouraging and helping them to pursue their cases through the criminal justice system.

90. Regarding emergency helplines, there are some telephone lines available for women and children in crisis, mostly managed by third sector organizations, such as the National Domestic Violence Helpline, run in partnership between Women's Aid and Refuge; the All Wales Domestic Abuse and Sexual Violence Helpline managed by Welsh Women's Aid, on behalf of the Welsh Government; the Scottish Domestic Abuse Helpline; and the 24 Hour Domestic and Sexual Violence Helpline, run by Women's Aid Federation Northern Ireland. Rape crisis centres run sexual violence helplines across the country, as does the National Society for the Prevention of Cruelty to Children through its Child Protection Helpline. In addition to this, some smaller service providers offer their own specialist helplines at the community level.

91. Interviewees' concerns revolve around the implementation of existing laws and policies, owing to the lack of consistent, effective and sensitive implementation and the variation in police and other service responses across the United Kingdom.

92. Interviewees highlighted that the current austerity measures and the devolution of authority to local authorities was having a negative impact on the provision of services to women victims of violence. NGO service providers working at the community level are now forced to devote more time and human resources to comply with more burdensome fundraising, bidding and reporting requirements. They are being forced to make cuts to their frontline services as a result of reduced funding, whether by closing refuges, reducing support hours or increasing waiting time for services, including admission to shelters. Such measures have negatively impacted the health and safety needs of women and children, thus placing them at a heightened risk of re-victimization. Access to trauma services, financial support and housing are crucial, but current reforms to the funding and benefits system are negatively impacting women's ability to address safety and other relevant issues.<sup>85</sup>

93. Interviewees also stated that women from black and minority ethnic communities, women belonging to the lesbian, gay, bisexual, transgender and intersex (LGBTI) community and women with disabilities are more adversely affected by these cutbacks. These women are often subjected to entrenched discriminatory practices in the political, social and economic spheres and are more likely to depend on benefits and support from an increasingly underresourced non-profit sector. Some argued that it was precisely the specialized services catering for black and minority ethnic women which are more affected, even more so than the services available to the mainstream violence against women and girls service providers.

94. There are various benefits and entitlements, depending on whether a woman is a refugee, an asylum-seeking woman or a victim of trafficking. Women may face insecure immigration status, have no recourse to public funds or legal aid and face greater risks, including being unable to access emergency accommodation, including shelters, or claim housing benefit, income support and other State benefits. This leads to further

<sup>84</sup> See <http://webarchive.nationalarchives.gov.uk/20130128112038/http://www.justice.gov.uk/news/press-releases/moj/4-million-to-help-rape-victims-rebuild-their-lives>

<sup>85</sup> End Violence against Women Coalition's submission to the Special Rapporteur.

victimization, vulnerabilities and risk of abuse. Migrant domestic workers, whose visas are tied to their employers, and who break the terms of their immigration status by leaving abusive employers, also face detention as immigration offenders if they do not go back home, unless they are victims of trafficking.

### C. Prosecution and punishment

95. Many individuals stated during interviews that the justice system is not effectively equipped, or responsive, to address the specific needs of women and girl survivors of violence. Many interlocutors of all ages and backgrounds indicated that they do not consider the justice system a viable option to obtain remedies for several reasons, ranging from the inadequate police responses and the lack of coordination among the various State agencies to the low levels of prosecution and the negligible conviction rates in such cases. Furthermore, the cuts to legal aid make it virtually impossible for some women to consider using the criminal justice system, as they cannot afford advice, representation or the costs linked to gathering the relevant evidence.

96. Regarding the police response to domestic violence, interviewees reported a pattern of continued scepticism, indifference and a lack of empathy towards women, particularly women from black and minority ethnic communities. Effective action is rare even when injuries from physical assaults are visible, and is virtually non-existent in cases of coercive control involving emotional, sexual and financial abuse. These concerns echo the findings of the March 2014 report by the Inspectorate of Constabulary, which found that domestic abuse is a priority on paper, but not in practice, in the majority of forces.<sup>86</sup> In response to concerns, one recent development is the setting up of a new domestic abuse national oversight group, chaired by the Home Secretary.

97. Interviewees also highlighted that investigations are often not undertaken, or are done superficially. Besides the immediate safety concerns for victims, the failure of the police to investigate or provide support can also affect other legal proceedings, such as child custody or immigration matters. For example, the failure to take account of, and adequately investigate, reports of domestic violence can result in migrant women being denied the right to remain in the United Kingdom as allowed under immigration law. In other cases, police failure to properly record or act on domestic violence can have an adverse effect on women's applications for legal aid in family proceedings, including when seeking a divorce or protection order or submitting an application for child-related residence and contact orders.

98. Interviewees argued that the failures of the police response are compounded by weak protection by the court system, which is widely perceived to be biased in favour of men and is focused on individual incidents of violence, rather than addressing the cumulative nature of domestic violence. In Scotland, for example, courts are required to consider the safety of children under 16 when hearing civil applications for "contact or residence" from estranged parents, with domestic abuse being a safety concern to be considered.<sup>87</sup> Interviewees claim that family lawyers and sheriffs may have a limited understanding of the dynamics of domestic abuse, with children and mothers often being obliged to keep unsafe and inappropriate contact with perpetrators of violence. Concerns were also expressed about shared parenting increasingly being seen as an appropriate,

<sup>86</sup> See <https://www.justicespectorates.gov.uk/hmic/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf>, p. 6.

<sup>87</sup> The 2006 Family Law (Scotland) Act introduced the need to protect the child from the risk of abuse in granting an order for contact or residence.

default position without due consideration of the best interests of the child. The Special Rapporteur also heard accounts of women, including those with disabilities, being deemed unfit mothers for having “failed to protect” their children from an abusive parent.

99. The victims of sexual violence interviewed expressed reservations about using the criminal justice system, owing to the lack of a responsive and supportive environment, which adds to their trauma and re-victimization, and the low levels of prosecution and convictions. Interviewees reported how victim-blaming, assumptions made based on the clothing worn by victims, the number of previous sexual partners or whether there had been prior consensual sexual contact with the perpetrator, all negatively influence the way women are treated when reporting sexual violence.

100. In terms of the low levels of convictions for cases of domestic and/or sexual violence, the Special Rapporteur was informed by interviewees that this is due to the nature of the offences, which often happen in private with no witnesses; underreporting by victims owing to, for example, fear of the perpetrator, fear they will not be believed or fear of repercussions for their family; the high number of victims who withdraw complaints or support for prosecutions even when a decision to prosecute has been taken; the fact that defendants know that there may be a withdrawal of support for prosecution which means that they will not make any admissions in interviews and will plead not guilty in court in anticipation that the victim will not give evidence; applications by defendants that lead to a delay in trials; and the issue of abuse linked to past incidents, which has an effect on the quality of the evidence owing to time and memory lapses.

101. As regards harmful practices, interviewees made reference to the public consultation process and their participation therein. They reiterated concerns about how the criminalization of forced marriage may lead to lower levels of reporting, as children and young women may not want a prosecution. Recommendations shared by service providers to encourage victims and potential victims to report include: strengthening existing legislation, such as the criminalization of breaches of forced marriage protection orders; prioritizing safety and empowerment measures over prosecution; and providing a package of specialist services, including safe accommodation, as well as practical and emotional support.<sup>88</sup> Such recommendations are also applicable to FGM cases, the first prosecution of such a case having taken place in 2014. Despite political declarations on the elimination of harmful practices, interviewees stressed the need for *de facto* remedies, including awareness-raising, training of frontline service agencies and investment in specialist women-centred services, to effectively protect women and girls from such practices.

#### **D. Provision of effective redress, including reparations**

102. Effective remedies must guarantee the rights of women to access both criminal and civil remedies, and the establishment of effective protection, support and rehabilitation services, including reparations.

103. The Criminal Injuries Compensation Scheme is a Government-funded scheme designed to compensate victims of violent crime, including domestic and sexual abuse, with awards calculated to reflect the seriousness of injuries. It includes compensation for mental or physical injury following a crime of violence, sexual or physical abuse, loss of earnings, and special expenses payments incurred as a direct result of an incident. The Special Rapporteur did not receive specific information as to whether women victims of violence

<sup>88</sup> See <https://www.opendemocracy.net/5050/amrit-wilson/criminalising-forced-marriage-in-uk-why-it-will-not-help-women>.

are benefiting from such compensation schemes, or whether such measures are meeting the goals of transformative reparations.

## V. Conclusions and recommendations

104. The Government of the United Kingdom has declared violence against women and girls to be a national priority. It has developed a number of strategies and action plans to address the issue at the national level, as have the constituent countries. These initiatives have been developed with the participation of civil society stakeholders and are monitored across government departments and by third sector organizations.

105. In most cases, however, these initiatives have resulted in isolated pockets of good practice and often depend on the personal commitment and leadership of individuals and certain authorities. This is largely due to the lack of a consistent and coherent human rights-based approach in the Government's response to violence against women and girls.

106. The Special Rapporteur is concerned about a number of regressive measures that have been adopted. These include the shift from gender specificity to gender neutrality, including gender-neutral services being increasingly favoured; power being devolved to local authorities on such issues as service provision, including changes to commissioning models which are detrimental to experienced community-based service providers; austerity measures that are having an effect on the provision of services to address violence against women; as well as other cross-cutting issues affecting women, such as poverty and unemployment. Women from black and minority ethnic communities, as well as migrant, refugee and asylum-seeking women, women belonging to the LGBTI community, and women with disabilities, have been further affected by these cutbacks, as specialized services catering for their specific needs have been reduced.

107. The Special Rapporteur would like to address the following recommendations to the Government of the United Kingdom:

(a) Prevention and awareness-raising:

- (i) Continue working in close cooperation with specialist third sector organizations to develop strategic, and sustained public campaigns to prevent violence against women and girls and to change sexist attitudes and behaviours;
- (ii) Ensure the consistent regulation and restriction of harmful and misogynistic images of women in the media that condone discrimination and abuse against them;
- (iii) Ensure a holistic approach to prevention of violence against women and girls by including appropriate and comprehensive sex and relationship education in schools as a compulsory subject; providing adequate training to teachers and other school staff; and developing gender-specific prevention policies;

(b) Service provision:

Urgently address the funding crisis faced by the specialist violence against women and girls sector, by:

- (i) Evaluating the funding policy for specialist services to address violence against women and making the necessary changes to ensure

long-term and sustainable funding from the central Government and/or the local authorities;

(ii) Ensuring that specialist services are available and accessible for black and minority ethnic women, for refugee and asylum-seeking women, as well as women facing particular barriers, such as women with disabilities and women from the LGBTI community, and dedicating "ring-fenced" funding for such specialist services;

(iii) Establishing the necessary safeguards to guarantee that local authorities operate within a human rights framework, and in compliance with the international obligations of the United Kingdom, when addressing the issue of violence against women and girls, particularly when making commissioning decisions.

(iv) Creating and maintaining a strong and sustained network of specialist women-centred services that provide prevention, protection and support services.

(c) Law and policy reform:

(i) Address normative gaps in legislation, at the national and constituent country levels;

(ii) Develop, in consultation with women's organizations and experts, implementation plans directed at key governmental departments, in order to strengthen the strategy "A Call to End Violence against Women and Girls" and the related action plans;

(iii) Set up specific taskforces or working groups, with representation of women from black and minority ethnic and refugee communities, to ensure effective policy and programming on violence against them;

(iv) Launch a comprehensive consultation with third sector organizations to evaluate the effects that the changes to legal aid has had on women victims of violence, with a view to addressing the challenges being articulated in access and implementation;

(v) Establish a specific policy which is responsive to disclosure and which includes an oversight component regarding asylum-seeking women. This is necessary to ensure that women's histories of victimization and abuse are taken into consideration when examining asylum claims and when considering the detention of asylum seekers;

(vi) Conduct an investigation into allegations of abuse, detention and removal of domestic workers, including those who are negatively impacted by the new visa policy;

(vii) Facilitate an independent examination of allegations of abuse in Yarl's Wood Immigration Removal Centre, and ensure that all complaints are thoroughly investigated and alleged perpetrators held accountable for violations;

(viii) Establish specific safeguards to ensure that women's histories of victimization and abuse are taken into consideration when making decisions about incarceration, especially for non-violent crimes;

(ix) **Implement fully the recommendations made by the Corston Report,<sup>89</sup> including the call to replace the women's prison estate with small women-specific custodial units with appropriate and necessary services;**

(x) **Implement the recommendations of the Committee on the Elimination of Discrimination against Women, such as the adoption of temporary special measures, to accelerate de facto equality between men and women in the country as a whole, as well as the full implementation of Security Council resolution 1325 (2000) in Northern Ireland.**

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<sup>89</sup> Available from [www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf](http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf).

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Report of the Special Rapporteur on violence against women,  
its causes and consequences, Rashida Manjoo****Addendum****Mission to Afghanistan\****Summary*

The present report contains the findings of the Special Rapporteur on violence against women, its causes and consequences, following her visit to Afghanistan from 4 to 12 November 2014. It examines the situation of violence against women, its causes and consequences, the responses of the State and the international community to such violence, and the remaining challenges, including by reviewing the progress made since the visits of her predecessors in 1999 (E/CN.4/2000/68/Add.4) and in 2005 (E/CN.4/2006/61 Add.5).

\* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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## Annex

*[English only]*

**Report of the Special Rapporteur on violence against women,  
its causes and consequences, on her mission to Afghanistan  
(4–12 November 2014)**

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## I. Introduction

1. The Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, visited Afghanistan at the invitation of the Government from 4 to 12 November 2014 to examine in a comprehensive manner the situation of violence against women in the country, including violence perpetrated within the family, in the community, in institutional settings and in the transnational sphere. She would like to thank the Government for the cooperation extended prior to and during her visit.
2. The Special Rapporteur is grateful for the support provided by the United Nations country team, and especially grateful for the logistical and substantive support provided by the Human Rights Unit within the United Nations Assistance Mission in Afghanistan (UNAMA).
3. During her nine-day visit, the Special Rapporteur held consultations in Kabul with high-ranking officials of the Ministries of Foreign Affairs, Women's Affairs, Interior and Justice. She also met with members of parliament; representatives from the Attorney General's Office and the Supreme Court of Justice and other judges and prosecutors; members of the police force, prison administration and medical staff in hospitals; and members of the Afghanistan Independent Human Rights Commission. She also met with the Governors and members of the local councils in Herat and Jalalabad.
4. In addition, the Special Rapporteur held meetings with representatives of civil society, United Nations agencies and members of the diplomatic corps. She also visited the Badam Bagh women's prison in Kabul, a juvenile rehabilitation centre and the burn clinic of the regional hospital in Herat and two shelters.
5. The Special Rapporteur is grateful to her interlocutors, including the women who shared their experiences of survival with her. She looks forward to a fruitful and continued dialogue with the Government and other stakeholders on the implementation of her recommendations.

## II. National context

6. The four decades of prolonged armed conflict across the country has contributed to significant levels of instability, insecurity, violence, rule-of-law challenges, poverty and underdevelopment, which have obstructed the effective realization and enjoyment of human rights for people of Afghanistan.
7. The first visit by the mandate of the Special Rapporteur on violence against women, its causes and consequences took place in 1999, during the Taliban era. In her report, the mandate holder noted that discrimination against women was officially sanctioned, thus affecting every aspect of the lives of women. In addition to the various manifestations of violence, as commonly understood, the issuance of strict edicts banning women from education and work, restricting their freedom of movement and imposing particular dress codes, among others, has had a lasting and devastating impact on the lives of women and girls. The mandate holder called for the end to the armed conflict and the establishment, through peaceful political negotiations, of a broad-based multi-ethnic fully representative Government that would respect internationally recognized human rights and abandon all policies that are inconsistent with the international human rights instruments to which Afghanistan is party. Another crucial recommendation in the report was the need for women's involvement in the political and peace process. The mandate holder recommended that all parties to the conflict end the violations of the human rights of women and girls; ensure respect for women's right to security of the person; ensure justice and accountability

for crimes against women; and take urgent measures to ensure the elimination of all discriminatory legislation, policies and practices.

8. The second visit to Afghanistan by the mandate took place in 2005, four years after the fall of the Taliban regime. The mandate holder acknowledged that efforts to improve the status of women had been closely linked to the challenge of multiple political and economic transitions confronting Afghan society and, importantly, attempts to move from the rule of power to the rule of law. She highlighted the fact that the extraordinary level of violence against women and girls had been embedded in a traditional system of male domination in which girls and women had no status as independent persons. She noted that the persistence of patriarchal cultural norms and customs and the misinterpretation of religion had been used to subjugate women and further perpetuate the cycles of violence against them. She called for urgent measures to protect women and girls from violence and reiterated the need to build a strong democratic inclusive State that is able to ensure an environment of economic and social development from which women and girls would fully benefit.

9. Afghanistan is currently recovering from the decades of conflict and, while the economy has significantly improved since the fall of the Taliban regime in 2001, the country remains heavily dependent on foreign aid. Women constitute roughly 49 per cent of Afghanistan's population of 27.5 million, and it is estimated that around 36 per cent of the total population lives in total poverty. In households that experience acute poverty, a young girl may be perceived to be an economic burden and marriage into another family may become a survival strategy to reduce economic pressures on the household. Women's economic participation is hindered by restrictions on their mobility and inability to gain access to resources, markets and employment. The Government has taken positive steps towards the empowerment of women, including through the implementation of the Afghanistan National Development Strategy (2009-2012) and the National Action Plan for Women Advancement. However, there remain deeply engrained structural and societal challenges that hamper the realization of this goal, including gender discrimination and male preference.

10. Over the past 15 years, several legislative and institutional advances have been made towards the promotion of human rights broadly and women's rights in particular. These include the creation of a national human rights institution, a ministry for women's affairs at the national level and departments of women's affairs at the provincial level, human rights units in various ministries, gender units in some ministries and the enactment in 2009 of the landmark Law on the Elimination of Violence against Women. During the visit, the Special Rapporteur was also informed of several law reform initiatives to be carried out over the following year or so, including a comprehensive review of the Penal Code and the drafting of a law to regulate the jurisdiction and functioning of *jirgas* and *shuras* (informal communal councils).

11. The literacy rate for adults (15 years and older) is as low as 31.4 per cent in some areas, with an average of 17 per cent for women and 45.4 per cent for men at the national level. Despite significant progress in the country's education system since 2001, the Ministry of Education estimates that about 3.5 million school-aged children are out of school. The majority of these children are girls, children in remote areas, disabled children, nomad children and members of other vulnerable groups.<sup>1</sup> Despite the Government's efforts to ensure education for girls and boys, social and cultural obstacles keep many girls out of

<sup>1</sup> See United Nations Population Fund, "Afghanistan State of the Youth Report 2014", p. 6. Available from <http://countryoffice.unfpa.org/filemanager/files/afghanistan/2014/reports/unfpaoyreportv333e.pdf>

school. Even for those girls who go to school, separate toilets and the necessary facilities for them during menstruation are lacking in most schools, resulting in girls missing at least a quarter of their educational life. In more remote areas, there is a shortage of female teachers, resulting in girls in those areas foregoing their education. Teachers are sometimes brought in from other provinces to address the shortage; however, insecurity and fear of violence for teachers and female students while travelling to neighbouring schools serves as a deterrent to mobility.

### **III. Manifestations of violence against women and girls, including its causes and consequences**

12. The sections below illustrate the current status of the most prevalent forms of violence against women, many of which were also identified in the mission reports of the previous mandate holders.

#### **A. Violence against women in the family**

13. Violence in the family sphere, including spousal violence and intrafamily violence, continues to affect women disproportionately. Most manifestations of violence are underreported in the context of a patriarchal and conservative society where domestic violence is not always perceived as a crime and is condoned by authorities that attribute the abuse to a woman's alleged disobedience of her husband. It is estimated that up to 87.2 per cent of women have experienced at least one form of physical, sexual or psychological violence, or forced marriage. More than 60 per cent of women experience multiple forms of violence.<sup>2</sup> A total of 4,505 cases of violence against women were registered by the joint database of the Ministry of Women's Affairs, Ministry of Interior and the Attorney General's Office from March 2012 to March 2013 in 32 provinces.<sup>3</sup> During the first half of 2013, the Afghanistan Independent Human Rights Commission registered 4,154 cases of violence against women, including 1,249 cases of physical violence, 976 cases of psychological violence, 862 cases of economic violence, 262 cases of sexual violence, and 805 cases of other types of violence. The Special Rapporteur was informed that, in the context of marriage, rape is seldom acknowledged or reported, since women do not have the freedom to decide whether or not to have sexual intercourse with their husband. In spite of its prevalence, domestic violence is not explicitly classified as a crime in the Penal Code, though it may constitute beating and laceration under articles 407 and 408. It has been reported that, during criminal investigations of domestic violence cases, including in the criminal and family courts, a factor often taken into account is whether the violence was a response to a woman's disobedience. This then results in decisions not to prosecute cases, or in the reduction of sentences.<sup>4</sup>

14. The legal age for marriage is 18 for boys and 16 for girls, although, under certain circumstances, a girl may marry at the age of 15 in accordance with articles 70 and 71 of the Penal Code. Nonetheless, early marriage practices remain prevalent. It is reported that 17.3 per cent of girls aged 15 to 19 are married. The 2010–2011 Afghanistan Multi Indicator Cluster Survey found that 15.2 per cent of surveyed women were married before

<sup>2</sup> Ibid., p. 5.

<sup>3</sup> See Ministry of Women's Affairs, "First Report on the Implementation of the Elimination of Violence against Women Law in Afghanistan" (January 2014), p. 1.

<sup>4</sup> See United Nations Office on Drugs and Crime (UNODC), "Afghanistan: Female prisoners and their social reintegration, March 2007", p. 21.

the age of 15 and 46.4 per cent before 18.<sup>5</sup> As noted by the previous mandate holder, the practices of child and forced marriages are at the root of most violence that takes place in the household, but are also amplified in other spheres (see E/CN.4/2006/61/Add.5, para. 23). A girl child is seen as an asset exchangeable for money or goods owing to the practice of the bride price (ibid, para. 24). Moreover, the importance of preserving family honour and girls' virginity is such that parents push their daughters into marriage well before they are ready. Poverty, as well as tradition, culture and religion, are used to justify early and/or forced marriages without regard for the adverse effects that such practices have on the health and well-being of the child. Girls who marry early have their first children at a younger age. Early childbearing contributes to pregnancy-related deaths and birth complications, which are the leading cause of mortality among girls.

15. Some of the victims of early and/or forced marriage often resort to committing self-immolation. Although not all women and girls who take this action intend to kill themselves, they inflict severe injuries upon themselves, which in some cases results in their death. The Afghanistan Independent Human Rights Commission recorded a total of 133 cases of self-immolation from March to November 2011. However, the Special Rapporteur was unable to confirm the prevalence of this practice during her visit. At the Burn Clinic in Herat, she was informed that there was a declining trend in the phenomenon and that a burn injury could only be categorized as a self-immolation subject to a confession from the victim, even if the medical evidence was conclusive.

16. Women and girls also run away from home as a response to harmful practices, including physical, psychological or sexual abuse, or being forced into marriage, to avoid death at the hands of their relatives. Running away is neither a crime under Afghan law, as there is no provision in the Penal Code that addresses the issue,<sup>6</sup> nor is it a crime under sharia law. However, the authorities sometimes charge women and girls who run away, with the "intention" to commit sexual intercourse outside of marriage (*zina*) or attempted *zina*, which is considered to be a crime against God's commands under sharia law. They can also be charged for the crime of *zina* under article 427(1) of the Afghan Penal Code.<sup>6</sup>

17. The Afghanistan Independent Human Rights Commission registered more than 280 women who had been killed by family members during 2011 and 2012. Most of these killings had been carried out on women and girls who had refused to enter into an arranged marriage or had been accused of having a relationship that the family considered to be inappropriate. Given the sensitivities surrounding this phenomenon, many of the cases are concealed, and other explanations are provided for the deaths.

18. Some interlocutors raised concerns about the issue of incest, including when committed against minors. The taboo nature of the crime results in victims not speaking about or reporting the abuse. The Special Rapporteur heard the testimony of a young woman who had been raped by her father for nearly a decade. In addition to the rapes, threats and abuse she suffered, she had been forced to abort a number of pregnancies, but was able to continue with one pregnancy. The victim alleged that some family members had wanted to kill the baby to destroy evidence of sexual violence. Members of the family were aware of the abuse, but no one intervened, out of fear.

<sup>5</sup> See United Nations Population Fund, "Afghanistan State of the Youth Report 2014", p. 9.

<sup>6</sup> See United Nations Assistance Mission in Afghanistan (UNAMA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), "A long way to go: implementation of the Law on elimination of violence against women in Afghanistan" (December 2012), p. 22. Available from <http://unama.unmissions.org/LinkClick.aspx?fileticket=Qy9mDiEa5Rw%3D&ta>.

## B. Violence against women in the community

19. Women are perceived as the custodians of a family's "honour" and are seen as "dishonouring" their families and communities when they are subjected to sexual violence. As such, it is the rape victim who carries the shame of the crime in many cases.<sup>7</sup> Women and girls who live in rural areas, unaccompanied women, widows, divorced women and women whose husbands are away are at a greater risk of becoming victims of rape.<sup>8</sup>

20. A significant number of rape incidents occur during armed robberies, kidnapping and gang activity in general. A typical example includes an incident in 2014 in which seven men dressed in police uniforms and armed with Kalashnikov rifles stopped two cars heading into Kabul. The armed men forced the occupants out of their cars, took money and jewellery and then proceeded to rape four women, including a pregnant woman. During a two-hour trial in September 2014, the seven men were charged with armed robbery and *zina* and sentenced to death under the provision of the 1987 Law on Crimes against Internal and External Security, which makes banditry punishable by death. The fact that the accused men were not charged with rape but with the crime of *zina* implies that the consent of the women had been obtained.<sup>9</sup>

21. The Special Rapporteur was concerned at the escalating level of targeted attacks against high-profile women, particularly those working in the public sector. For instance, in February 2015, a former journalist and member of the provincial council of Nangarhar Province was wounded in an explosion in Jalalabad city and died a week later. In November 2014, a parliamentarian was targeted in a suicide attack, which resulted in the death of three individuals.

22. Earlier in 2014, another parliamentarian was wounded in an attack when leaving her office. Her sister, who is also a member of parliament and a prominent women's rights activist, was attacked in 2010. In 2013, a senator lost her daughter in an attack on her car and a parliamentarian was kidnapped and held for several weeks before being released. In July 2013, the highest-ranking female police officer in Helmand was shot and killed on her way to work. In July 2012, the head of the Department of Women's Affairs in eastern Laghman province was killed by a car bomb as she left for work. Gunmen killed her replacement in December 2012. These examples are illustrative of the systematic pattern of attacks against women working in the public domain. These attacks occur with impunity and often serve as a warning to other women who aspire to hold such positions.

## C. Violence against women perpetrated and/or condoned by the State

23. During her visits to the Badam Bagh women's prison in Kabul and the juvenile rehabilitation centre in Herat, the Special Rapporteur expressed serious concern at the high number of women and girls arrested, prosecuted and imprisoned for so-called "moral crimes", including adultery and premarital sex. Interlocutors stated that such convictions were often made on the basis of minimal evidence of wrongful behaviour and that investigations were often not properly carried out. Of the 744 female prisoners across the country, 428 — or 58 per cent — were charged with so-called "moral crimes".<sup>10</sup> In the Badam Bagh prison, where 159 women were held at the time of the visit, the Special

<sup>7</sup> See UNAMA and OHCHR, "Silence is violence: end the abuse of women in Afghanistan" (8 July 2009), p. 21. Available from <http://unama.unmissions.org/Portals/UNAMA/vaw-english.pdf>

<sup>8</sup> *Ibid.* p. 29.

<sup>9</sup> See [www.hrw.org/news/2014/09/08/afghanistan-gang-rape-trial-badly-flawed](http://www.hrw.org/news/2014/09/08/afghanistan-gang-rape-trial-badly-flawed).

<sup>10</sup> Information provided by the UNAMA Rule of Law Unit on 5 November 2014.

Rapporteur was informed that 90 women were in pretrial detention and 69 had been convicted. A total of 11 girls were being held at the juvenile rehabilitation facility in Herat, most of who had been arrested on charges of attempted *zina*.

24. The Special Rapporteur noted that the women's versions of the incidents prior to their detention was seldom taken into account, and that women victims were often treated as criminals by the criminal justice system, thus violating due process rights. One interviewee alleged that, following her rape by a relative, she was sentenced to six years of imprisonment, along with her rapist, for the crime of *zina*.

25. The forced submission to virginity testing of women and girls accused of moral crimes, including those have been raped, to gather evidence for the purposes of a conviction, was an issue of concern raised by women prisoners.

26. The widespread practice of harassment of female police officers by their peers and superiors is of concern as it serves to deter many women from joining or remaining in the police force. There are also allegations that sexual favours are often demanded in exchange for promotions. In addition, the lack of female-only facilities, including toilets and changing areas, further contributes to women's vulnerability.<sup>11</sup> During a meeting with the Provincial Policewomen's Council in Herat, the Special Rapporteur was informed that most of the cases the Council receives concern harassment, promotions and issues related to gender-based discrimination. In an effort to prevent harassment and the undermining of female police officers' authority by commanders and male police colleagues, and to integrate women as full, equal and respected professionals within the police force, the Ministry of Interior adopted the "Strategy for the Integration of Afghan National Police Female Personnel" in 2013. It outlines measures for recruiting more women and preventive measures to create an enabling environment for the protection of policewomen from sexual harassment and violence. Pursuant to Order No. 163, issued in March 2014, steps are under way to establish a commission tasked with drafting an action plan to operationalize the strategy. However, the strategy fails to incorporate a clear, detailed, confidential and enforceable complaints mechanism that could lead to either disciplinary action or, if warranted, criminal sanctions against perpetrators of harassment or abuse of authority.<sup>12</sup>

#### **D. Violence against women linked to the transnational sphere**

27. There has been a significant increase in internal displacement over the past few years as a consequence of the conflict. Other causes of displacement include generalized violence, serious violations of human rights, natural disasters, development projects and man-made disasters. It has been reported that, at the end of September 2014, 755,011 individuals had been internally displaced in Afghanistan.<sup>13</sup> Afghan internally displaced persons do not live in camps, but in informal settlements on the outskirts of major cities. The overcrowded living situation increases the risks of violence for women. Many of them are subjected to domestic violence and forced marriages. Furthermore, the switch in traditional housing conditions, including the move from rural to urban environments, have

<sup>11</sup> See Oxfam, "Women and the Afghan Police" (10 September 2013). Available from <https://www.oxfam.org/en/research/women-and-afghan-police>.

<sup>12</sup> Inputs provided by UNAMA on progress and existing gaps in the implementation of Security Council resolution 1325 (2000) for women and girls during 2013 and early 2014 in the areas of prevention, participation, relief and recovery and protection, dated 30 March 2014.

<sup>13</sup> UNHCR confidential report.

an effect on women's freedom of movement, as they cannot benefit from the protection of their courtyards, gardens and villages.<sup>14</sup>

28. More than 60 per cent of trafficking in women and children takes place inside Afghanistan, while cross-border trafficking occurs in 40 per cent of the cases, for the purposes of sexual exploitation, domestic servitude and sale of narcotics.<sup>15</sup> Female victims of trafficking not only experience sexual assaults and slavery from the perpetrator, but also are victims of honour killings and subjected to violence by their own families after being rescued.<sup>16</sup>

#### IV. Responses in addressing violence against women

29. With the adoption of resolution 1325 (2000) and six subsequent resolutions on women, peace and security (1820 (2008), 1888 (2009), 1960 (2010), 2106 (2013) and 2122 (2013)) the Security Council outlined concrete actions to be taken by the international community and respective Member States to address the issues of women, peace and security. In November 2014, the Government of Afghanistan adopted its 2015-2018 National Action Plan on the implementation of resolution 1325 (2000).

30. Since the fall of the Taliban era, the international community, including the United Nations and international donors, has invested significant human, technical and material resources to assist the Government in its post-conflict peacebuilding and reconstruction efforts. Despite significant advances in the status of women, they continue to face severe challenges in the realization of their civil, political, economic, social and cultural rights. Prevailing insecurity and the generalized violence across the country, the existence of deep-rooted conservative social norms and cultural practices and the limitations on freedom of movement for women all contribute to women's role in public life being limited, including in political and peace processes.

##### A. National responses

31. The institutional framework for addressing women's rights includes a number of governmental bodies and institutions, both at the capital and the provincial levels, which have similar mandates and functions. Established in 2001 by a presidential decree, the Ministry of Women's Affairs is responsible for monitoring, supporting and coordinating the implementation of policies and legislation and developing and contributing to the development of policies for advancement of women, including the adoption of the 10-year National Action Plan for Women of Afghanistan in 2008. Under the supervision of the Ministry, State institutions are expected to mainstream gender in their policies, plans and activities, and ministries are encouraged to dedicate at least 30 per cent of their budget to it.

<sup>14</sup> See Majidi and Henmion, "Resilience in displacement? Building the potential of Afghan displaced women", *Journal of Internal Displacement*, vol. 4, No. 1 (January 2014). Available from <http://samuelhall.org/REPORTS/Building%20the%20resilience%20of%20Afghan%20displaced%20women.pdf>

<sup>15</sup> See Afghanistan Independent Human Rights Commission, "Summary report on investigation of causes and factors of trafficking in women and children" (July 2011).

<sup>16</sup> See Afghanistan Independent Human Rights Commission, "National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan" (Spring 2013).

The Plan commits the State to ensure the civil service comprises 30 per cent women by 2018.<sup>17</sup>

32. While the establishment of Ministry of Women's Affairs has been considered a positive sign, it has not been fully able to exercise its mandate effectively, owing to such challenges as inadequate budgetary allocation by the State; international donor funding dependency; a lack of independence; a lack of capacity of staff; cultural norms that affect functioning; the politicization of appointment processes; poor spatial infrastructure; and a lack of adequate security in the workplace. The lack of substantive support by the Government for the Ministry, in comparison with other ministries, was observed during the mission.

33. There are a total of 27 gender units within the different ministries. Some units are staffed only with a gender focal point, who have no access to the Ministry's budget and are without a clear job description. Most of the units lack staff, office space and technical equipment. In March 2010, the Government established the Special Violence against Women Unit of the Attorney General's Office to investigate and prosecute cases of violence against women and support and assist victims throughout the process. The unit registered 285 cases from Kabul province between March 2010 and March 2011, but filed indictments with the courts in only 21 of those cases. More than 70 per cent of cases were closed, archived, withdrawn or mediated owing to prevalent cultural and traditional norms. Since then, specialized units for the elimination of violence against women have been set up in eight provinces.<sup>12</sup> The Ministry of Interior established family response units staffed by policewomen throughout the country, mainly in the provincial capitals. There are 17 such units in Kabul and, as at May 2013, there were 184 units in 33 provinces.<sup>18</sup> The units mainly handle domestic disputes and domestic violence and are rarely involved in investigating cases of rape, self-immolation or forced marriage.

34. The High Commission for the Elimination of Violence against Women is mandated to coordinate activities among government, non-governmental institutions and related organizations to "effectively combat violence". It is chaired by the Ministry of Women's Affairs and its members include the Deputy Attorney General and the Deputy Ministers of Interior; Justice; Public Health; Information and Culture; Education; Higher Education; Labour, Social Affairs, Martyrs and the Disabled; and Hajj and Religious Affairs. Membership is also open to the Afghanistan Independent Human Rights Commission, the Head of the Special Family Court and the Head of the Afghanistan Independent Bar Association. Commissions on the elimination of violence against women have also been established in 32 of 34 provinces to coordinate, plan and track the implementation of the Law.

35. The Afghanistan Independent Human Rights Commission was established in 2002 through a presidential decree in line with the provisions of the Bonn Agreement. The Commission consists of nine Commissioners appointed by the President for a five-year term. It is mandated to monitor the human rights situation, promote and protect human rights, conduct investigations into human rights violations and take measures for the improvement and promotion of human rights nationwide. The Commission employs approximately 600 staff working in regional and provincial offices across the country and plays a central role in monitoring, reporting and advocating for women's rights broadly, including gender-based violence. The Commission works with a wide range of stakeholders, including United Nations agencies and religious leaders.

<sup>17</sup> See Ministry of Women's Affairs, "First Report on the Implementation of the Elimination of Violence against Women Law in Afghanistan" (January 2014), p. 14.

<sup>18</sup> *Ibid.*, p. 16.

36. Despite considerable achievements and the progress made in the area of human rights in the country, the Afghanistan Independent Human Rights Commission continues to face numerous challenges in achieving its objectives and implementing its activities. Owing to the high level of insecurity, the Commission services cover just 44 per cent of the area linked to its provincial and regional offices, and many districts are deprived of services provided by the Commission.<sup>19</sup> Other obstacles include a weak presence of the rule of law, a persistent culture of impunity, high levels of corruption, abuse of power by government officials and a weak judicial system. The human rights of women and children continue to be undermined by reports of egregious crimes and impunity for such crimes.<sup>20</sup> Furthermore, the Commission is almost entirely dependent on foreign Governments and international organizations for funding. The lack of appropriate State-allocated budgets has affected the planning and programmatic activities of the Commission.

37. Following the appointment of five new commissioners and the reappointment of four serving commissioners in June 2013, concerns were raised about the transparency of the selection process and the Afghanistan Independent Human Rights Commission was at risk of being downgraded from an A status institution to a B status. In addition to the limited consultation and transparency in the appointment of commissioners, other issues highlighted during the November 2013 review of the Commission by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights was the gender imbalance of the its staff and its insufficient State funding. However, in October 2014, the Committee recommended that the Commission be re-accredited with an A status, which has since been done.<sup>21</sup> The Special Rapporteur commends the Commission for its commitment and leading role in addressing the issue of violence against women in the country, despite the constraints and challenges it faces.

38. In August 2010, the High Council of the Supreme Court, in approval number 572, instructed prosecutors on how to handle "runaway" cases, by invoking article 130 of the Constitution. According to the instruction, courts should assess whether runaway women are single or married, the cause and motive for running away and the place to which the woman has run. If a woman runs to escape harassment and disturbance by family members and goes to a relative's house, the house of a legitimate *mahram* (unmarriageable kin) or to a justice institution, then this shall not be regarded as a crime from the sharia perspective. However, if a woman goes to a stranger's house, even if it is to escape ill-treatment, the instruction states that she exposes herself to crimes such as "adultery and other associated offences", which are considered illegal under sharia law, and thus prohibited and punishable.<sup>6</sup> Other instructions have been issued on how to handle "runaway" cases, including from the Attorney General's Office. Urgent Communication No. 91/02 of 11 April 2012 requests that units for the elimination of violence against women issue instructions to all prosecution offices not to press charges against women for "running away" or "attempted *zina*" – as these are not actual codified crimes under Afghan law. Furthermore, in December 2012, the Supreme Court sent a letter (No. 820/347) to the Attorney General's Office stating that running away from home to escape domestic violence and seeking assistance from justice institutions, legal aid organizations or relatives was not a crime and should not be prosecuted.

39. Penalties for women convicted of moral crimes range from medium- to long-term imprisonment. Sentences will be clarified in the forthcoming Criminal Procedure Code and

<sup>19</sup> See Afghanistan Independent Human Rights Commission, Annual Report 2012-2013, p. 55.

<sup>20</sup> See Afghanistan Independent Human Rights Commission report to the Fifteenth Annual Meeting of the Asia Pacific Forum, 3-5 August 2010, Bali, Indonesia.

<sup>21</sup> See report of the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (October 2014).

are expected to define short-term imprisonment as ranging from three months to one year; medium-term imprisonment as one year to five years, and long-term imprisonment as 5 to 15 years or 15 to 20 years, depending on the crime.<sup>22</sup>

40. Article 17 of the Law on the Elimination of Violence against Women makes reference to article 426 of the Afghan Penal Code, in respect of sexual assaults. If the person against whom the crime is committed is under 18 or meets any of the other conditions laid down in article 427, paragraph 2, of the Code, then the offender is sentenced to a long prison term, not exceeding 10 years. In a recent case, the Kabul City Primary Court sentenced a perpetrator to 20 years imprisonment and a fine of 1,500,000 Af\$ (approximately \$26,000) for rape under article 17 (2), (3) and (5) of the Law and articles 426, 427 and 148 of the Code.

41. The Anti-Human Trafficking and Abduction Law was passed in 2008 with the aim of supporting the victims of human trafficking, especially women and children. Anyone who sexually provokes or involves individuals under the age of 18 in sexual activities or prostitution as his or her profession, or provides them with facilities for such activities, is considered criminally liable and will be sentenced to a maximum of three years in prison. If the exploited person is raped or forced to pederasty, the punishment can increase up to 15 years in prison. Under article 8 of Law on the Elimination of Violence against Women, the penalty for anyone who exploits or forces an adult woman into prostitution increases to 7 to 16 years of imprisonment. If the exploited person is a child, the perpetrator is sentenced to a minimum of 10 and a maximum of 16 years in prison.<sup>23</sup>

42. The Law on Prison and Detention Centres provides that, if the case of an accused person is not finalized within 9 months, the prison administration must notify the relevant court or public prosecutor in writing 15 days before the expiry of the term. If there is no reply, the accused person shall be released from prison.<sup>24</sup> In practice, time limits and other safeguards are seldom applied and women often remain in pretrial detention for much longer than the prescribed period. Although article 86 of the Interim Criminal Procedure Code makes provisions for alternatives to imprisonment while awaiting trial, it is seldom utilized.

43. In 2011, the United Nations Population Fund commissioned an assessment of services provided to victims of gender-based violence by State and non-State agencies in three pilot areas: Bamiyan and Nangahar provinces and Kabul city. The assessment revealed that most service providers did not have units responsible for addressing the special needs of victims of gender-based violence. Other issues highlighted include the capacity, quality and reach of services provided to victims; the shortage of trained female professionals; and the lack of specialized knowledge and skills among key staff members. Moreover, most health-care facilities did not have separate facilities for examining and interviewing victims of gender-based violence. In terms of access to services, the majority of service providers did not promote the services among target population groups. Service providers often place the responsibility for starting the interaction solely on the victims or their families. As regards the processing of cases, there is a lack of relevant policies, standard operating procedures, protocols and ethical and safety guidelines regulating the treatment of victims of gender-based violence.<sup>25</sup>

<sup>22</sup> See [www.eupol-afg.eu/node/522](http://www.eupol-afg.eu/node/522).

<sup>23</sup> See CEDAW/C/AFG/1-2, paras. 113–117.

<sup>24</sup> See UNODC, "Afghanistan: Female prisoners and their social reintegration" (March 2007), p. 23.

<sup>25</sup> See UNFPA, "Assessment of services provided to victims of gender-based violence by State and non-State agencies in pilot areas" (2011), p. 3.

44. Civil society is composed of both Afghan and international non-governmental organizations. While organizations working exclusively on women's rights are numerically few, they are dynamic and organized. The organizations working directly with victims of gender-based violence have to operate in secrecy, as they are viewed with hostility and victims are often perceived as criminals. For example, shelters are viewed by many as institutions that encourage women to leave home; to behave immorally and outside of what is traditionally considered "acceptable" in a conservative and religious society; or as prostitution houses; or establishments that are causing the break-up of families. Thus both the service providers and those seeking protection are stigmatized and shunned by society.

45. Many of the challenges that civil society organizations face are linked to the generalized context of insecurity, which limits their presence to the least volatile areas, and to the difficulties in accessing funding that enables sustainability. Furthermore, various interlocutors highlighted the lack of consultation during the drafting of legislation and the absence of participatory democracy. The Special Rapporteur was informed that legislation is usually drafted between the Ministry of Justice and international experts and that non-governmental organizations are only consulted in the final stages of the process, after decisions have been made. This was a criticism that was also voiced by some State authorities, and concerns were raised about the consequences of perceptions of the international community and consultants owning the law-making processes.

## **B. International responses**

### **1. United Nations**

46. The United Nations country team in Afghanistan comprises 21 United Nations agencies, funds, programmes and offices, as well as UNAMA, which was established by the Security Council in 2002 at the request of the Government to assist it in laying the foundations for sustainable peace and development in the country. Through its Human Rights Unit, UNAMA supports strategies and mechanisms for combating violence against women, including prevention and remedial mechanisms for female victims of violence. UNAMA is also providing support to the Ministry of Interior to implement and monitor a policy and action plan for the protection of female staff from harassment and abuse. The UNAMA Rule of Law Unit and the United Nations Office for Drugs and Crime are also supporting the Government with the reform of the penal system.

47. The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) has been working in Afghanistan since 2002. The agency has provided technical and financial support to the Ministry of Women's Affairs and civil society in the management and operation of 13 women's protection centres and two family guidance centres, as well as in advocacy and awareness-raising to promote prevention of violence against women, operation of the provincial commissions for the elimination of violence against women and resource centres, and training of and coordination between stakeholders concerning legal reform.

48. In 2013, the United Nations Development Programme (UNDP) undertook a review of the functioning of units for the elimination of violence against women in Kabul, Mazar-E-Sharif, Herat and Jalalabad. It recommended the establishment of a court on the elimination of violence against women to enable the units to function effectively, in light of the difficulties of limited management, training and resources, and a high level of corruption or perceived corruption faced in all of the Government ministries, including the

court system.<sup>26</sup> Technical assistance is being provided by UNDP to relevant government institutions to support efforts to develop and implement rights-based guidelines and protocols regulating mediation of registered incidents of violence against women. In 2013, the World Health Organization developed a "Gender-based violence treatment protocol for primary health care in Afghanistan" to improve the delivery of a multi-sectorial response to survivors of gender-based violence. Moreover, the Office of the United Nations High Commissioner for Refugees (UNHCR) supports the implementation of the national internally displaced persons' policy and has established women's *shuras* (consultations) to enable them to voice their concerns and participate in decisions that affect their lives.

49. While acknowledging the notable contributions of the United Nations system, the Special Rapporteur observed some duplication of work and the need for better coordination among the agencies in the interest of resource management, efficiency and the achievement of a more substantive improvement of women's rights for all Afghan women.

## 2. Donor community

50. Since the end of the Taliban era, the international community has made significant investments towards Afghanistan's reconstruction. The Bonn Agreement adopted in December of 2001 led to the adoption of a national Constitution in 2004. It also led to the increase of women's participation in civil and political life and a commitment to respect international human rights law through ratification of or accession to numerous instruments, including the Convention on the Elimination of All Forms of Discrimination against Women. The concluding resolution at the second Bonn conference in 2011 reaffirmed the human rights and fundamental freedoms enshrined in the Constitution, including the rights of women, as well as a thriving and free civil society.

51. The international community pledged over \$67 billion at nine donors' conferences from 2003 to 2010. However, it is reported that international aid actually disbursed was significantly less. In July 2012, the international community committed to directing financial support towards Afghanistan's economic development by providing over 16 billion dollars through 2015 and sustaining support through 2017 at or near levels of the past decade. On 4 December 2014, the National Unity Government of Afghanistan and the international community, along with other partners, met in London to reaffirm and consolidate their partnership as they begin the Transformation Decade (2015–2024).

52. Between 2002 and 2009, the United States of America was Afghanistan's largest donor, followed by European Union institutions, the United Kingdom of Great Britain and Northern Ireland, Germany, Canada and Japan. The United Nations, non-governmental organizations, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies are important channels of delivery for donor funds. Funding from the United States aims at providing humanitarian assistance for families and communities affected by conflict or natural disasters; and assistance to women that focuses on health, education, economic development, shelters, women's rights and political empowerment.<sup>27</sup>

53. The funding of shelters by international donors is crucial as a long-term solution to the housing needs of women and girls. In most developed countries, shelters are places of temporary refuge and support for women escaping violence. The situation of women in Afghanistan is somewhat different and women who are forced to find shelter in a safe

<sup>26</sup> Claudia Elliott, United Nations Development Programme Consultant, "A report on the critical areas, functions, and gaps and the ongoing work of the elimination of violence against women units in Kabul, Mazar-E-Sharif, Herat and Jalalabad, Afghanistan" (August 2013).

<sup>27</sup> See [www.usaid.gov/afghanistan/gender-participant-training](http://www.usaid.gov/afghanistan/gender-participant-training).

house risk finding themselves with no way out of their situations. They do not have the option of returning home or to their communities and thus shelters become a long-term residential solution for women and their children. As noted by the previous mandate holder, and confirmed during this visit, the difficulty of finding durable solutions for women who end up in a shelter is compounded by the societal attitude towards shelters, which to a large extent are regarded as places of doubtful reputation. There are also concerns regarding the ability of shelters to provide protection, the management abilities of staff and the long-term reintegration and support that is provided to women. Unfortunately, some shelters have also been used in the past for pretrial detention, owing to the lack of female pretrial facilities.

54. The findings of a 2008 report on aid effectiveness, which were reiterated by interlocutors during the mission, pointed to the fact that one quarter of all aid to Afghanistan had been allocated to technical assistance, which was intended to build Government capacity. It was argued that much of such assistance had been wasteful, donor-driven and of limited impact. Also, in the design or execution of projects, too often the promotion of the capabilities, status and rights of women was a low priority. The report also revealed that most of the aid had been directed to Kabul and other urban centres rather than to rural areas, where it is most needed.<sup>28</sup> Some interlocutors argued that, when bilateral agreements are signed with civil society or United Nations agencies, the benefits of such aid does not reach volatile areas, often owing to the recipients not having nationwide coverage, as opposed to government agencies, which more often do.

## **V. Remaining challenges**

55. The Government of Afghanistan has taken measures to promote the rights of women. However, given the current transitional process, characterized by a new Government, a growing budget deficit and the withdrawal of international troops, the Special Rapporteur expresses her concern about the promotion and protection of women's human rights, including accountability for all acts of gender-based violence. In addition to the generalized context of insecurity, the equal participation of women in decision-making positions and peacebuilding processes and the lack of implementation of legislation and its impact on women's access to justice are some of the key challenges faced by women.

### **A. Continuum of violence and insecurity**

56. Afghanistan is slowly recovering from a long period of conflict, albeit with high levels of insecurity. The consequences of conflict, poverty, underdevelopment, social norms and practices, and the use of religion and culture as justification for control of women in every sphere, all continue to contribute to human rights violations, with women being disproportionately affected. It has been reported that there was a 22 per cent rise in civilian casualties in 2014, with the highest number of women's deaths and injuries from conflict-related violence since 2009. In total, 556 incidents were recorded, involving 909 women (298 deaths and 611 injured). Furthermore, women who were left as sole income-providers after the death or injury of their husbands often experience long-term negative social and economic consequences. Poverty forces many women to give their daughters in marriage to repay debts or take their children out of school, often to work. Widowed

<sup>28</sup> See Matt Waldman, "Aid effectiveness in Afghanistan" (March 2008), p. 2.

women are particularly vulnerable to other forms of violence and abuse from family and community members.<sup>29</sup>

57. Certain areas of the country are outside of the Government's control, and targeted attacks against communities and high-profile women and men by anti-Government elements, both in Government-controlled areas and other areas, are a frequent occurrence. Politicians and policewomen also face threats and violence outside their working environment, often from the anti-Government elements and radicals. In different provinces, numerous women have been forced to quit their jobs or have been killed.<sup>30</sup>

## B. Women's participation in decision making and peace building processes

58. As regards women's participation in decision-making positions, under the previous Government, women headed the Ministry of Women's Affairs, the Ministry of Public Health and the Ministry of Labour, Social Affairs, Martyrs and the Disabled.<sup>31</sup> In January 2015, the president announced his 25 ministerial nominees, which included three women nominated to lead the Ministries of Information and Culture, Higher Education and Women's Affairs. The number of women nominated for public office increased to four and, in April 2015, the Afghanistan parliament approved the appointment of four women ministers who would lead the Ministry of Women's Affairs, the Ministry of Higher Education, the Ministry of Labour, Social Affairs, Martyrs and the Disabled and the Ministry of Counter-narcotics.

59. The Constitution has introduced a quota system to ensure a minimum level of female representation in the two houses of parliament. A minimum of two of the elected members of the lower house from each of Afghanistan's 34 provinces must be female. In addition, a third of the upper house seats must be female.<sup>32</sup> Currently, there are 69 out of 249 women in the *Wolesi Jirga* (lower house) and 28 female senators out of 102.<sup>33</sup> As regards the representation of women in the judiciary, while there are no women in the High Council of the Supreme Court, there are 250 female judges in both primary courts and appeal courts throughout the country.<sup>34</sup> As at April 2013, there were 300 female defence lawyers and 250 female prosecutors, including a chief prosecutor in Herat, the only woman ever to hold such a position.<sup>35</sup> The current Chairperson of the Afghanistan Independent Human Rights Commission is a woman.

60. In 2005, a former Minister for Women's Affairs, was appointed governor of Bamiyan. She was the first female provincial governor in Afghanistan's history. In 2009, the first ever female mayor was appointed in Daikundi province.<sup>36</sup> In January 2013, the country's first female district governor in Faizabad district was appointed, making her the only woman appointed among 60 district governors. Unfortunately, amendments made to the Electoral Law in July 2013 reduced the quota for women representatives in the

<sup>29</sup> UNAMA and OHCHR, "Afghanistan annual report 2014: protection of civilians in armed conflict" (February 2015), p. 3.

<sup>30</sup> See [www.watchafghanistan.org/files/FactSheets\\_Women/Women\\_in\\_Security\\_English.pdf](http://www.watchafghanistan.org/files/FactSheets_Women/Women_in_Security_English.pdf).

<sup>31</sup> See Ministry of Women's Affairs, "First Report on the Implementation of the Elimination of Violence against Women Law in Afghanistan" (January 2014), p. 14.

<sup>32</sup> See Peace Research Institute Oslo, "Women's rights and political representation: past achievements and future challenges" (Oslo, 23 November 2013).

<sup>33</sup> See [www.unwomen.org/-media/8FD64A021C8840AC9AF6906D50658487.ashx](http://www.unwomen.org/-media/8FD64A021C8840AC9AF6906D50658487.ashx).

<sup>34</sup> Meeting with the Supreme Court of Justice in Kabul on 9 November 2014.

<sup>35</sup> See Ministry of Women's Affairs, "First Report on the Implementation of the Elimination of Violence against Women Law in Afghanistan" (January 2014), p. 15.

<sup>36</sup> *Ibid.* p. 14.

Provincial Councils from 25 to 20 per cent. However, there was an increase in female candidacy from 8 per cent in 2005 to 10 per cent in 2009 to 11.4 per cent in the 2014 elections.<sup>12</sup>

61. In terms of the number of women operating in the security sector, it has been reported that, as at 1 March 2014, women constituted 0.4 per cent of the Afghan National Army, 0.75 per cent of the Afghan Air Force, 1.3 per cent of the Afghan National Police and 4.6 per cent of the staff of the Directorate of Prisons.

62. Women are minimally represented in peace negotiations, and women's rights continue to be a low priority in the peace talks agenda. For example, out of 1,600 individuals who attended the Peace Jirga hosted by the Government of Afghanistan in June 2010, only 300 were women. In September 2010, the High Peace Council to seek peace talks with the Taliban was formed, but only 9 out of the 70 appointed members were women.<sup>37</sup> Furthermore, interlocutors stated that female members of the High Peace Council played a symbolic role rather than being active participants.

### **C. Lack of effective implementation of legislation and its impact on women's access to justice and effective remedies**

63. As regards to access to justice and accountability for gender-based crimes, while the legal framework provides for sufficient protection for violence against women, there are institutional, procedural and social obstacles limiting women's access to justice. In most instances, women do not use the formal justice system, for reasons including a lack of easy access to the justice system, the ineffective implementation of existing legislation and the overreliance on the informal justice system. During a meeting with representatives of civil society and local councils in Herat, the Special Rapporteur was informed that *shuras* often deal with cases of violence against women despite legislative measures such as the Law on the Elimination of Violence against Women and the existence of institutions with a legislative mandate to mediate such cases.

64. The Law on the Elimination of Violence against Women is a major legal development in the prevention and elimination of violence against women. The Government has undertaken steps to implement and enforce the Law, including through the establishment of specialized prosecution units for the elimination of violence against women in some provinces and the establishment of family response units within some police stations. However, the Law is not implemented to the same degree in the different provinces, with particularly low levels of implementation in rural areas. In numerous cases, mediation is conducted by *jirgas* and *shuras*, whose membership is limited to men, and solutions are made on the basis of cultural norms rather than using the legal framework, to ensure accountability and effective redress for the victim. Law enforcement agencies such as the Afghan National Police and family response units have a mandate to mediate cases; however, there are no criteria or regulations governing the conduct of mediation.

65. Very few cases of violence against women, particularly cases of rape or sexual abuse, are reported compared with the actual prevalence rates. Women and girls are prevented from reporting acts of violence for various reasons, including deeply engrained attitudes that regard domestic violence as a private matter and the treatment of victims of sexual abuse as perpetrators of *zina*. Other reasons include stigma, shame, discrimination, fear of reprisals from the perpetrators, feelings of guilt and lack of support from friends and family. The Special Rapporteur was informed that, even when women wish to file

<sup>37</sup> See Oxfam, "Behind closed doors" (24 November 2014), p. 17.

complaints, they are often discouraged, and when they file complaints, they are encouraged to withdraw the case. Prosecutors often use one of the objectives of the Law on the Elimination of Violence against Women, defined under its article 2 as the preservation of the family unit, to mediate cases out of the formal court system. As regards protection mechanisms, the main challenges include the insufficient number of shelters and safe houses for women who are victims of violence and the lack of opportunities for women to be reintegrated back into their families and society.

66. Other challenges to women's access to justice include insufficient resources and poor infrastructure and a lack of female police officers and specialized units to specifically address crimes against women and girls. The lack of proper investigation, evidence collection and forensic capacities further hinder women's access to justice. The issue of forced virginity testing to gather evidence for criminal prosecutions represents a serious violation of women's rights to privacy, bodily integrity and dignity.

67. Furthermore, corruption in the criminal justice system is prevalent and represents an obstacle to the rights of due process and fair trial, thus affecting women's access to justice. The Special Rapporteur was informed that bribes were often required for cases to move through the different stages of the criminal justice system. Also, perpetrators can go unpunished if bribes are paid to relevant officials. This creates a culture of impunity and fosters further distrust of the formal justice system.

68. Illegal detention and imprisonment, human rights violations in prisons and the lack of fair and effective implementation of non-custodial sanctions continue to remain a challenge.<sup>18</sup> The Special Rapporteur heard numerous accounts from women in prison and representatives of civil society who corroborated such violations.

69. Victims of violence and representatives of civil society with whom the Special Rapporteur met highlighted the lengthy criminal procedure, the non-respect of protection measures and the inadequate pecuniary and detention sanctions against perpetrators.

## VI. Conclusions and recommendations

70. **The Government has undertaken a number of legal and institutional initiatives to meet its human rights obligations and to address the situation of women and girls in the country, despite the continued political, economic, social and developmental challenges. Political commitments to protect and promote human rights continue to be highlighted through the Bonn process, the Kabul Conference, the Tokyo Conference and, most recently, the 2014 London Conference. However, these commitments have not translated into concrete improvements in the lives of the majority of women, who remain marginalized, discriminated against and at high risk of being subjected to violence. In light of the above, the Special Rapporteur would like to reiterate and expand on key recommendations made by her predecessors in 1999 and 2005, many of which remain relevant today.**

### A. Institutional machinery

71. **The Special Rapporteur recommends that the Government:**

<sup>18</sup> See UNODC, "Afghanistan: implementing alternatives to imprisonment, in line with international standards and national legislation" (2008), p. xxii.

(a) Evaluate the mandate, structure and functioning of the Ministry of Women's Affairs and provide it with sufficient human, technical and financial resources to fulfil its mandate;

(b) Strengthen the independence of the National Human Rights Commission in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), including by ensuring that the nomination and selection process is fair and transparent and ensuring adequate budgetary allocations to enable it to effectively fulfil its mandate;

(c) Consider implementing the recommendations of UNDP as highlighted in its review of the functioning of the units for the elimination of violence against women, including aspects related to prosecution;

(d) Allocate adequate human, technical and financial resources to ensure that all criminal justice officials can fulfil their mandate, including ensuring fair and equitable distribution of resources across the country.

## **B. Law and policy reforms**

72. The Special Rapporteur recommends that the Government:

(a) Strengthen the practice of participatory democracy, especially through more effective consultation processes in the law-making sphere;

(b) Prioritize the clear codification of family law and the criminal law concerning gender-specific offences to ensure compliance with article 22 of the Constitution, which expressly provides that men and women have equal rights and duties before the law;

(c) Ensure that legislation clearly specifies the obligation to register all marriages and divorces;

(d) Ensure that the criminal law establishes criminal liability for all parties involved in the organization of child and forced marriages.

73. In relation to the reform of the 1960 Penal Code, the Special Rapporteur recommends that the Government:

(a) Incorporate gender-specific offences, including rape, into the new penal code. These offences should be clearly defined and the sanctions applicable to each offence should be specified to ensure that gender-specific offences are treated with the same degree of gravity as gender-neutral crimes. A review of all existing laws that include criminal offenses, including the Law on the Elimination of Violence against Women, should be undertaken to ensure consistency;

(b) Repeal article 398 of the Penal Code to ensure that perpetrators of honour killings are not granted legal concessions;

(c) Revise the Criminal Procedure Code and prohibit degrading practices, including virginity testing, as a source of evidence in criminal investigations;

(d) Ensure that there is accountability in cases of self-immolation, including through effective forensic and other investigations;

(e) Reform the law pertaining to moral crimes to ensure that it incorporates policies and directives that have been issued.

74. In relation to the draft law regulating the jurisdiction of *jirgas* and *shuras*, the Special Rapporteur recommends that:

(a) Clear guidelines and policies on the use of mediation to settle disputes be developed, including provisions on non-discrimination and sanctions for non-compliance;

(b) The processing of a case by *jirgas* or *shuras* not preclude such cases from being brought before the formal justice system;

(c) All gender-based violence cases that have a criminal component be referred to the formal justice system to ensure accountability.

75. The Special Rapporteur recommends that the Government repeal the amendment to the Electoral Law so as to ensure that the quota for women representatives in the Provincial Councils is increased.

### C. Women in detention

76. The Special Rapporteur recommends that the Ministry of Justice, in cooperation with the Ministry of Women's Affairs and the Ministry of Interior, initiate a review, including recommendations in respect of provisions in the penal and family laws relevant to moral offences, of the files of all women and girls currently in detention for crimes generally, and more specifically for "moral crimes", to verify whether:

(a) There has been a valid court decision to sentence the detainees to imprisonment, or in the case of pretrial detention, an order by the authority competent under the Criminal Procedure Law;

(b) That the women or girls have been found guilty or stand accused of crimes expressly punishable under codified law currently in force;

(c) That the women have been given their rights to fair trial and due process.

77. The Government should consider alternatives to detention and address the question of transit houses for women who are released from detention.

78. The Government should increase the number of shelters for victims of violence against women; strengthen support services for victims, including counselling, medical and rehabilitation services; provide training and skills development programmes; assist with financial and technical support to ensure good practices and sustainability; and develop a strategy to ensure financial support.

### D. Women working in the public sector

79. The Special Rapporteur recommends that the Government address more fully the safety and security concerns of women working in the public sphere, including women politicians and police personnel, and in particular that it:

(a) Undertake an inquiry into the allegations of harassment and abuse of women working in the security sector across the country;

(b) Establish and/or strengthen monitoring mechanisms both within the Ministry of Interior and externally, to ensure that women working in the security sector are protected from all forms of abuse, exploitation and harassment.

## **E. International community**

80. The Special Rapporteur recommends that the international community, including the United Nations and the donor community, continue to support the Government of Afghanistan in fulfilling its duty to promote and protect the rights of women in Afghanistan. In particular, the Special Rapporteur recommends that the international community:

(a) Advocate for the inclusion of women and women's rights issues on the agenda of peace negotiations and set the promotion of women's right as a target for the provision of further funding;

(b) Review the actual amount of funding that is currently being given directly to the Government of Afghanistan and to local non-governmental organizations, to enable a more precise picture of who is benefiting from aid. There is a need to address perceptions of large amounts of funding to foreign consultants and United Nations agencies, which are sometimes seen as wasteful and leading to a lack of capacity-building and sustainability of local authorities and service providers;

(c) Assist in the review of protection mechanisms, including shelters, in order to find sustainable long-term housing alternatives for women in need of protection. Emphasis should be placed on the empowerment of women and girls through education, skills development and job creation.